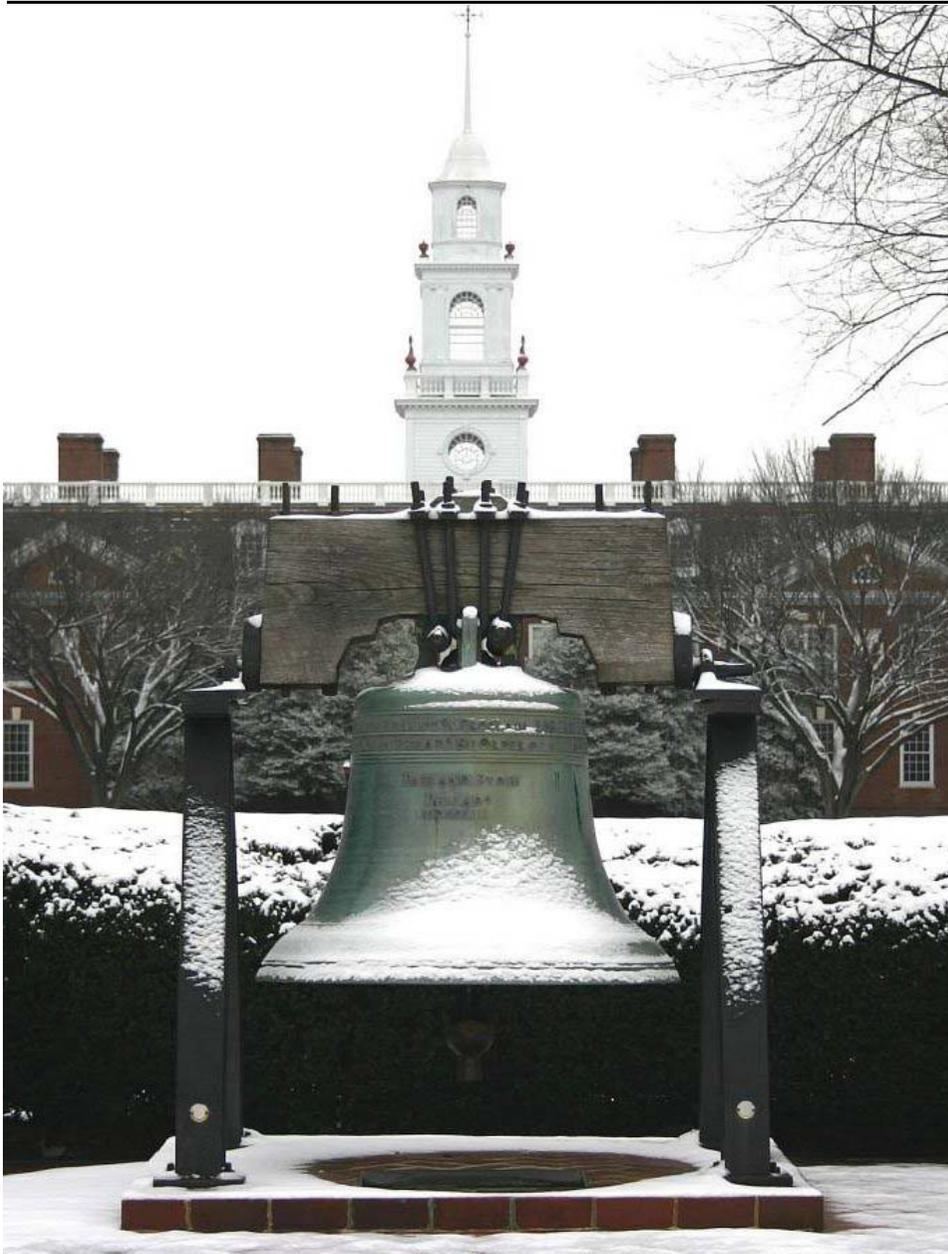

Delaware Register of Regulations

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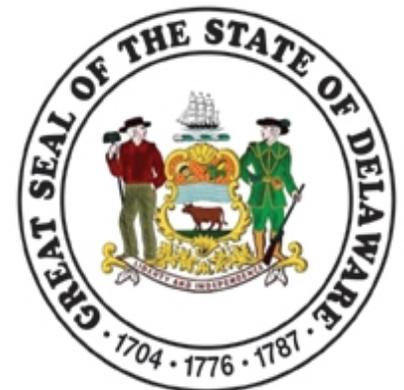


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Hearing Notices



Pursuant to 29 **Del.C.** Chapter 11, Subchapter III, this issue of the *Register* contains all documents required to be published, and received, on or before December 16, 2013.

INFORMATION ABOUT THE DELAWARE REGISTER OF REGULATIONS

DELAWARE REGISTER OF REGULATIONS

The *Delaware Register of Regulations* is an official State publication established by authority of 69 *Del. Laws*, c. 107 and is published on the first of each month throughout the year.

The *Delaware Register* will publish any regulations that are proposed to be adopted, amended or repealed and any emergency regulations promulgated.

The *Register* will also publish some or all of the following information:

- Governor's Executive Orders
 - Governor's Appointments
 - Agency Hearing and Meeting Notices
 - Other documents considered to be in the public interest.
-

CITATION TO THE DELAWARE REGISTER

The *Delaware Register of Regulations* is cited by volume, issue, page number and date. An example would be:

16 **DE Reg.** 1227 - 1230 (06/01/13)

Refers to Volume 16, pages 1227 - 1130 of the *Delaware Register* issued on June 1, 2013.

SUBSCRIPTION INFORMATION

The cost of a yearly subscription (12 issues) for the *Delaware Register of Regulations* is \$135.00. Single copies are available at a cost of \$12.00 per issue, including postage. For more information contact the Division of Research at 302-744-4114 or 1-800-282-8545 in Delaware.

CITIZEN PARTICIPATION IN THE REGULATORY PROCESS

Delaware citizens and other interested parties may participate in the process by which administrative regulations are adopted, amended or repealed, and may initiate the process by which the validity and applicability of regulations is determined.

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

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The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the *Register of Regulations*. At the conclusion of all hearings and after receipt, within the time allowed, of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the *Register of Regulations*, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

Any person aggrieved by and claiming the unlawfulness of any regulation may bring an action in the Court for declaratory relief.

No action of an agency with respect to the making or consideration of a proposed adoption, amendment or repeal of a regulation shall be subject to review until final agency action on the proposal has been taken.

When any regulation is the subject of an enforcement action in the Court, the lawfulness of such regulation may be reviewed by the Court as a defense in the action.

Except as provided in the preceding section, no judicial review of a regulation is available unless a complaint therefor is filed in the Court within 30 days of the day the agency order with respect to the regulation was published in the *Register of Regulations*.

CLOSING DATES AND ISSUE DATES FOR THE DELAWARE REGISTER OF REGULATIONS

ISSUE DATE	CLOSING DATE	CLOSING TIME
February 1	January 15	4:30 p.m.
March 1	February 17	4:30 p.m.
April 1	March 17	4:30 p.m.
May 1	April 15	4:30 p.m.
June 1	May 15	4:30 p.m.

DIVISION OF RESEARCH STAFF

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The regulations are listed alphabetically by the promulgating agency, followed by a citation to that issue of the *Register* in which the regulation was published. Proposed regulations are designated with (Prop.); Final regulations are designated with (Final); Emergency regulations are designated with (Emer.); and regulations that have been repealed are designated with (Rep.).

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Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Emergency Regulations

Under 29 **Del.C.** §10119 an agency may promulgate a regulatory change as an Emergency under the following conditions:

§ 10119. Emergency regulations.

If an agency determines that an imminent peril to the public health, safety or welfare requires the adoption, amendment or repeal of a regulation with less than the notice required by § 10115, the following rules shall apply:

(1) The agency may proceed to act without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable;

(2) The order adopting, amending or repealing a regulation shall state, in writing, the reasons for the agency's determination that such emergency action is necessary;

(3) The order effecting such action may be effective for a period of not longer than 120 days and may be renewed once for a period not exceeding 60 days;

(4) When such an order is issued without any of the public procedures otherwise required or authorized by this chapter, the agency shall state as part of the order that it will receive, consider and respond to petitions by any interested person for the reconsideration or revision thereof; and

(5) The agency shall submit a copy of the emergency order to the Registrar for publication in the next issue of the *Register of Regulations*. (60 Del. Laws, c. 585, § 1; 62 Del. Laws, c. 301, § 2; 71 Del. Laws, c. 48, § 10.)

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY

Statutory Authority: 25 Delaware Code, Section 7011 (25 **Del.C.** §7011)

PUBLIC NOTICE**202 Rent Increase Dispute Resolution Procedures**

AND NOW, this 16th day of December, 2013, the Delaware Manufactured Home Relocation Authority (the "Authority"), by its Chairperson and pursuant to resolution of the Board, issues the following Order:

1. Pursuant to its statutory authority, the Authority has adopted a comprehensive set of emergency regulations setting forth practices and procedures (the "Emergency Regulations") to be used in the administration of the Rent Justification Dispute Procedures set forth in 25 **Del.C.** §7043.

2. The Rent Justification Dispute Procedures, by statute, apply to all manufactured home community leases expiring on or after November 30, 2013. Accordingly, the Authority has received rent increase notices that trigger the dispute resolution procedures set forth in the statute. Due to time restraints, it was necessary to establish emergency regulations to provide manufactured home community owners and tenants with guidelines and procedures to be used pending the adoption of final rules of practice and procedure and/or regulations by the Authority.

3. At its Board meeting on Thursday, December 12, 2013, the Board adopted a resolution to renew the Emergency Regulations for a period of 60 days after the expiration of the initial 120 day period.

NOW THEREFORE, for the reasons set forth above, **IT IS ORDERED**:

1. That the Emergency Regulations relating to the "Rent Increase Dispute Resolution Procedures" shall remain in effect for an additional 60 days after the expiration of the initial 120 day period.

2. That pursuant to 29 **Del.C.** §1134, the Authority shall transmit a copy of this Order and the attached form of Public Notice to the Delaware Registrar for publication in the next issue of the Delaware *Register of Regulations*.

3. That the Authority will continue to receive, consider, and respond to petitions by any interested person for the reconsideration, or revision of these Emergency Regulations. Copies of any such petitions shall be mailed and or delivered to the Authority at the Authority's business office located at 1675 S. State Street, Suite E, Dover, DE 19901.

4. That the Authority reserves the jurisdiction and power to enter such further orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE AUTHORITY:

Mitch Crane, Chairperson, December 16, 2013

202 Rent Increase Dispute Resolution Procedures

1.0 Introduction: Role of Authority Regarding Rent Increase Disputes

The Authority's role in the administration of rent increase disputes is limited to implementing and overseeing the process by which rent increase disputes are resolved and to the extent applicable, funding direct arbitration costs in excess of the arbitration fees paid by the participants in arbitration proceedings under 25 Del.C. §7043. In fulfilling that role, the Authority shall at all times remain neutral and shall not provide legal advice to any party relating to any rent increase dispute.

2.0 Definitions

For the purposes of these regulations, the following words and phrases have the meaning ascribed to them in this Section unless the context of the regulation clearly indicates otherwise, or unless the meaning set forth below is inconsistent with the Act or the manifest intention of the Act.

"Act" means the Delaware Manufactured Home Owners and Community Owners Act set forth in 25 Del.C. Chapter 70.

"Affected home owner" means a leaseholder of a manufactured home community whose rent is proposed to be increased by the community owner of the community within which the leaseholder's manufactured home is located.

"Authority" means the Delaware Manufactured Home Relocation Authority.

"Community owner" means the owner of a manufactured home community, as defined in the Act.

"CPI-U" means the average annual increase of the Consumer Price Index For All Urban Customers in the Philadelphia-Wilmington-Atlantic City area for the most recently available preceding thirty-six (36) month period at the time the notice of a rent increase is mailed to the leaseholders.

"Designated representative" means an individual authorized to act on behalf of any party, provided said authorization is in writing and signed by the party on whose behalf the individual is authorized to act.

"Direct arbitration costs" means the following out of pocket costs paid in connection with an arbitration hearing held pursuant to the provisions of 25 Del.C. §7043(c): (a) fees payable to the arbitrator; (b) the reasonable cost of any meeting rooms or facilities used for the arbitration hearing; (c) the cost of the court reporter for attendance at the arbitration hearing; (d) the reasonable out of pocket expenses paid by the arbitrator in connection with the scheduling and holding of the arbitration hearing; and (e) any other costs approved in advance by the Authority and determined by the Authority to constitute a "direct arbitration cost". Direct arbitration costs shall not include the cost of preparing a verbatim transcript of the hearing unless the arbitrator determines that a verbatim transcript is necessary in order for the arbitrator to render a decision.

"HOA" means a home owners association registered with the Authority pursuant to 25 Del.C. §7026(b).

"Leaseholder" means a person who is a party to a lease subject to the provisions of 25 Del.C. §7040 through 7055.

"Notice to the Authority" or words to that effect shall mean the delivery of notice to the following address: Delaware Manufactured Home Relocation Authority, 1675 S. State Street, Suite E, Dover, DE 19901.

"Party" shall include a community owner, an HOA, and any leaseholder affected by a proposed rent increase.

3.0 Notification of Rent Increase Dispute Resolution Provisions

Each year, the Authority provides community owners with notice of the right of first offer provisions set forth in 25 Del.C. §7026. Simultaneously with the sending of that notice, the Authority shall also provide each manufactured home community owner with a copy of the Rent Increase Dispute

Resolution provisions set forth in 25 Del.C. §7040 through 7055 and a copy of any applicable regulations adopted by the Authority.

4.0 Rent Increase Notice Procedures

- 4.1 A community owner is required to give written notice to each affected home owner, to the Home Owners Association, if one exists, and to the Authority, at least 90 days prior to any increase in lot rent. When more than one tenant is affected by the rent increase, in lieu of providing the HOA or the Authority with copies of each letter sent to each affected tenant, the community owner may provide the HOA and/or the Authority with a letter certifying that written notice has been sent to each affected home owner together with a copy of the form of notice provided, which form must contain the information required hereunder. The notice must identify all affected home owners by lot number, name, group, or phase. In any such notice, in addition to the information required to be provided under 25 Del.C. §7043(a), the community owner shall (with respect to each affected home owner) state whether or not the proposed rent increase exceeds the CPI-U and provide the following information:
- 4.1.1 The current monthly lot rent;
 - 4.1.2 The proposed monthly lot rent;
 - 4.1.3 The CPI-U;
 - 4.1.4 The effective date of the rent increase;
 - 4.1.5 The community owner's contact information, which shall include the name and mailing address of a representative of the community owner authorized to respond to questions relating to the proposed rent increase and schedule any necessary meetings and/or arbitration proceedings required under the Act; and
 - 4.1.6 If the proposed rent increase exceeds the CPI-U, a date, time and place on which the community owner is available to meet with the affected home owners, Home Owners Association, or their representatives, which dates must be within thirty (30) days of the date the notice is mailed out.

5.0 Scheduling of Meetings When Proposed Rent Increase Exceeds CPI-U

When a proposed rent increase exceeds the CPI-U, the Authority shall schedule a meeting between the parties at the time, date, and place set forth in the community owner's initial notice unless the Authority determines, based on input from the parties, that said time, date, or place should be changed, in which case the Authority, in its sole discretion, shall schedule the meeting at a time and place to be held within thirty (30) days from the mailing of the notice of the rent increase. Unless otherwise agreed to by all of the parties, the meeting shall take place in the county in which the manufactured home community is located. Notice of the time, date and place of the meeting shall be provided to the community owner and the HOA. If no HOA exists, notice of the time, date, and place of the meeting shall be provided to the affected leaseholders, or their designated representative, by the community owner.

6.0 Meeting Procedures

- 6.1 At any meeting held pursuant to 25 Del.C. §7043(b), the community's HOA, if any, shall be the designated representative of the leaseholders. In all other cases, where the number of affected leaseholders exceed five (5), the leaseholders shall designate in writing at least one representative to act on behalf of the affected leaseholders. In all cases the community owner shall designate a representative to act on behalf of the community owner. At each meeting, a "sign-in" sheet shall be available and any person attending the meeting shall be required to sign the sign-in sheet confirming said person's attendance at the meeting. The community owner shall maintain a copy of the sign-in sheet for each meeting and provide the Authority with a copy of the sign-in sheet at the end of each meeting.
- 6.2 At the meeting, the community owner shall, in good faith, disclose all of the material factors resulting in the decision to increase the rent, including the financial and other pertinent documents and information supporting the reasons for the rent increase.

- 6.3 If the parties are unable to resolve any dispute during the initial meeting, the parties may agree to extend or continue the meeting to a mutually agreeable time and place.
- 6.4 If the parties are able to resolve all disputes relating to the proposed rent increase, the community owner shall so inform the Authority in writing. Any resolution of the rent dispute shall be documented by a writing signed by all of the parties and/or their duly authorized representatives.
- 6.5 If all of the affected parties are unable to resolve the dispute at the final meeting, or are unable to agree on extending or continuing the meeting, any party who has not agreed to a resolution of the issues may, within thirty (30) days from the conclusion of the last meeting, file a petition, together with the \$250.00 arbitration fee, requesting the Authority to appoint a qualified arbitrator to conduct non-binding arbitration proceedings pursuant to 25 Del.C. §7043(c). In order to be considered timely, both the petition and the arbitration fee must be filed and paid to the Authority within the aforesaid thirty (30) day period.
- 6.6 If none of the parties pay the \$250.00 arbitration fee and petition the Authority to appoint a qualified arbitrator within the aforesaid thirty (30) day period, the community owner shall be authorized to implement the proposed rent increase as set forth in the initial notice, or if applicable, the rent otherwise agreed to by the community owner and affected leaseholders.
- 6.7 Any party is entitled to be represented by legal counsel at any meeting provided that said legal counsel is authorized to practice law in the state of Delaware.

7.0 Arbitration Procedures

- 7.1 Upon receipt of a petition to appoint a qualified arbitrator pursuant to 25 Del.C. §7043(c) and the initial \$250.00 arbitration fee from the party filing the petition, the Authority shall prepare a caption setting forth the names of the parties and shall select an arbitrator to serve as the arbitrator and to conduct the non-binding arbitration proceeding. Each arbitration petition shall be assigned a docket number by the Authority. Thereafter, any paper filed with the Authority or appointed arbitrator shall include on the first page the caption and docket number assigned to the case. The initial petition shall include the name, mail and email addresses, telephone and fax numbers of the person filing the petition and the name, address, telephone and fax numbers of the person representing the person filing the petition. The initial \$250.00 arbitration fee shall be paid by the party filing the petition at the time the petition is filed. An original and five (5) copies of the petition shall be provided to the Authority. If the petition is filed by the community owner, a copy of the petition shall be mailed to each affected home owner, and if applicable, to the Home Owners Association (or their respective designated representative) on the same day that the petition is filed. If the petition is filed by an affected home owner, or if applicable, the Home Owners Association, a copy of the petition shall be mailed to the community owner (or the community owner's designated representative) on the same day the petition is filed. Any document required to be mailed shall be mailed by United States mail, first class, with postage prepaid.
- 7.2 The Authority shall endeavor to create a list of members of the Delaware Bar who are both qualified and willing to act as arbitrators. The Authority will post a list of such arbitrators on the Authority's web site.
- 7.3 Any arbitrator appointed by the Authority shall be a member of the Delaware Bar who has provided the Authority with satisfactory evidence of his or her training in alternative dispute resolution.
- 7.4 If all of the parties have agreed in writing to the appointment of a specific Delaware attorney to act as arbitrator, the Authority shall appoint the agreed upon attorney as arbitrator.
- 7.5 Upon receipt of written notice from the Authority of his or her appointment, the appointed arbitrator shall determine whether or not there is any conflict of interest or other matter that would otherwise affect his or her ability to render an impartial decision, in which case the appointed arbitrator shall decline the appointment and the Authority shall appoint another arbitrator. Notwithstanding the foregoing, if all of the parties agree in writing to waive any conflict of interest and the arbitrator is willing to accept the appointment, the appointed arbitrator may accept the appointment. Upon appointment of an arbitrator, the parties shall provide the arbitrator with a list of witnesses who are expected to testify as quickly as possible so that the arbitrator may run a conflict of interest check on all names supplied by the parties.

- 7.6 Where a community owner has proposed rent increases in excess of the CPI-U that would affect leaseholders at different time periods, with the consent of all the parties, the Arbitrator is authorized to consolidate the cases for purposes of the arbitration hearing. Under such circumstances, only one payment of \$250.00 each shall be required from the community owner and leaseholders.
- 7.7 Simultaneously with the filing of a petition to arbitrate, the party filing the petition shall pay to the Authority the \$250.00 arbitration fee set forth in 25 **Del.C.** §7043(c). The other party or parties shall pay their \$250.00 arbitration fee within fifteen (15) calendar days after the filing of the petition. Where multiple leaseholders are affected by the proposed rent increase, only one payment of \$250.00 shall be required on behalf of all such leaseholders. All such fees collected by the Authority shall be deposited into the Authority's general operating account and shall not be considered a part of the Trust Fund administered by the Authority pursuant to 25 **Del.C.** §7012. If any party or parties fail to timely pay the required \$250.00 arbitration fee, the arbitrator is authorized to enter judgment against the party or parties failing to pay the arbitration fee.
- 7.8 Unless agreed to in writing by all of the parties, all arbitration hearings must be held within sixty (60) days from the date of the filing of the petition to arbitrate. Where multiple petitions relating to the same matter have been filed, the date of the filing of the first petition shall govern.
- 7.9 As quickly as practicable after an arbitrator is selected, the arbitrator shall contact the parties (or their representatives and by teleconferences, whenever possible) to schedule the hearing at a mutually convenient time and place. Hearings may be held in the evenings or on weekends. Once an arbitrator has been appointed, no *ex parte* communications with the arbitrator are permitted. Prior to the hearing, the arbitrator shall notify the Authority in writing of the time, date, and place of the hearing.
- 7.10 The arbitrator is authorized to schedule an informal preliminary conference with the parties (in person or by telephone) as the arbitrator deems appropriate in order to narrow the issues and minimize the expense of the arbitration process. The arbitrator is authorized to require the parties to exchange or provide to the other parties documents relevant to the rent increase at issue, including documents related to the standards set forth in 25 **Del.C.** §7042.
- 7.11 At any arbitration hearing:
- 7.11.1 The Delaware Uniform Rules of Evidence shall be used as a guide by the arbitrator for admissibility of evidence submitted at the arbitration hearing;
- 7.11.2 All testimony will be under oath or affirmation administered by the arbitrator, unless waived by all parties;
- 7.11.3 Testimony shall be transcribed and shall be considered a written record;
- 7.11.4 Each witness shall be subject to reasonable cross examination by the opposing party; and
- 7.11.5 The Arbitrator is authorized to limit the number of witnesses to avoid duplication, and where multiple leaseholders are affected by the proposed rate increase, require the affected leaseholders to designate a representative to act on and testify on behalf of all affected leaseholders.
- 7.12 The parties are encouraged to stipulate to undisputed facts and to the admissibility of evidence in order to narrow the issues and minimize the expense of the arbitration process.
- 7.13 Subject to the terms and conditions of any confidentiality designation pursuant to section (q) below, any exhibit that a party intends to rely upon at the hearing must be provided to the arbitrator and opposing parties at least five (5) business days prior to the hearing, except for good cause shown.
- 7.14 At the hearing, the community owner shall open and close the presentation of evidence. The burden of proof shall be on the community owner.
- 7.15 If a party fails to appear at a scheduled hearing, the arbitrator may enter an order ruling against the party who failed to appear.
- 7.16 All parties to hearings, their counsel, and witnesses shall conduct themselves in a proper manner. Disruptive demonstrations of any kind at hearings shall not be permitted. Any disregard by parties, attorneys or other persons of the rulings of the arbitrator on matters of order or procedure may be noted on the record. The arbitrator may, in his or her discretion, recess or continue any hearing when

the conduct of witnesses or other persons unduly disrupts or interferes with the proper conduct of the hearing.

- 7.17 Any party may request that the arbitrator accord confidential treatment to some or all of the information contained in a document. If the claim of confidentiality is challenged by any party, then the party claiming confidential treatment must demonstrate to the arbitrator that the designated information is confidential as recognized by state law. Notwithstanding any claim of confidentiality, any party to the proceeding shall be allowed to inspect a copy of the confidential document upon the signing of a confidentiality agreement in a form approved by the arbitrator.
- 7.18 While a court reporter shall be present at all arbitration hearings, unless specifically requested by the arbitrator, a paper or electronic transcript of the hearing shall not be required. In the absence of a specific request by the arbitrator, any party may, at said parties sole cost and expense, order a paper or electronic transcript of the hearing.
- 7.19 Arbitration hearings conducted pursuant to 25 Del.C. §7043 are deemed private proceedings. Unless otherwise authorized by the arbitrator for good cause shown, attendance at any hearing shall be limited to the following:
- 7.19.1 the arbitrator;
 - 7.19.2 the court reporter;
 - 7.19.3 the parties and their respective legal counsel;
 - 7.19.4 witnesses who are not parties, while testifying; and
 - 7.19.5 a representative of the Authority.
- 7.20 Settlements are to be encouraged. If the case settles before a hearing or before the arbitrator issues a decision, the arbitrator, after being informed of any settlement, shall arrange a teleconference with all parties (or their authorized representatives) to confirm the settlement, unless the parties have done so in a writing signed by all of the parties (or their authorized representatives). Upon confirmation of any settlement, the arbitrator shall notify the Authority that a settlement has been agreed to by the parties.
- 7.21 The decision of the arbitrator shall be based solely on the evidence presented at the hearing and based on the standards set forth in 25 Del.C. §7042. The arbitrator shall render his or her decision within fifteen (15) days of the conclusion of the arbitration hearing. Decisions by the arbitrator shall be in writing, shall clearly set forth the date of the issuance of the decision, and shall inform the parties of the right to appeal the decision to the Superior Court by filing, within thirty (30) days of the date of the issuance of the arbitrator's decision, a notice of appeal with the office of the Prothonotary of the county within which the affected manufactured home community is located. A copy of the decision shall be provided to the Authority.

8.0 Appeals

- 8.1 As provided in 25 Del.C. §7044, in any arbitration proceeding, the community owner, home owners association, or any affected home owner may appeal the decision of the arbitrator within thirty (30) days of the issuance of the arbitrator's decision. Any such appeal shall be to the Superior Court in the county of the affected community. If a community is located in more than one county, the appeal may be filed in the Superior Court of either county.
- 8.2 Appeals to the Superior Court by law shall be on the record without a trial de novo.
- 8.3 Promptly after the filing of any appeal, the party appealing from the arbitrator's decision shall, at the appealing party's expense, order a copy of the transcript of the arbitration hearing.
- 8.4 Appeals to the Superior Court shall be prosecuted in accordance with Rule 72 of the Delaware Superior Court Rules of Civil Procedure.

9.0 Computing Time

In computing any time period under these rules, the first day of the designated period of time shall commence on the next day after the event requiring the computation of the time period. The last day of the time period shall be included.

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text. Language which is ~~stricken~~ through indicates text being deleted.

Proposed Regulations

Under 29 **Del.C.** §10115 whenever an agency proposes to formulate, adopt, amend or repeal a regulation, it shall file notice and full text of such proposals, together with copies of the existing regulation being adopted, amended or repealed, with the Registrar for publication in the *Register of Regulations* pursuant to §1134 of this title. The notice shall describe the nature of the proceedings including a brief synopsis of the subject, substance, issues, possible terms of the agency action, a reference to the legal authority of the agency to act, and reference to any other regulations that may be impacted or affected by the proposal, and shall state the manner in which persons may present their views; if in writing, of the place to which and the final date by which such views may be submitted; or if at a public hearing, the date, time and place of the hearing. If a public hearing is to be held, such public hearing shall not be scheduled less than 20 days following publication of notice of the proposal in the *Register of Regulations*. If a public hearing will be held on the proposal, notice of the time, date, place and a summary of the nature of the proposal shall also be published in at least 2 Delaware newspapers of general circulation. The notice shall also be mailed to all persons who have made timely written requests of the agency for advance notice of its regulation-making proceedings.

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITYStatutory Authority: 25 Delaware Code, Section 7012 (25 **Del.C.** §7012)

1 DE Admin. Code 201

PUBLIC NOTICE**201 Delaware Manufactured Home Relocation Trust Fund Regulations**

The Delaware Manufactured Home Relocation Authority (the "Authority") will entertain written comments to proposed amendments to the Authority's regulations relating to the administration of the Delaware Manufactured Home Relocation Trust Fund ("Trust Fund") established pursuant to 25 **Del.C.** §7012. The Authority was established by the Delaware Legislature pursuant to 25 **Del.C.** §7011. The primary purpose of the Authority is to: (a) provide financial assistance to manufactured homeowners who are tenants in a manufactured home community where the community owner changes the use of land or converts the manufactured home community to a condominium or cooperative community; and (b) to provide financial assistance to manufactured home community owners for the removal and/or disposal of non-relocatable or abandoned manufactured homes when there is a change in use or conversion.

Pursuant to its statutory authority, at the Authority's meeting on December 12, 2013, the Authority adopted a resolution proposing for adoption certain revisions to the existing regulations to be used for the administration of the Trust Fund. The proposed regulations approved at the December 12, 2013 meeting of the Authority and published herein will set the maximum payments available to a landlords and tenants for removal and relocation costs and the maximum payment available to tenants for homes that are determined to be non-relocatable.

Copies of the proposed regulations are available for review by contacting:

William A. Denman, Esquire

Parkowski, Guerke & Swayze, P.A.

116 W. Water Street

Dover, DE 19904

(302) 678-3262

Email: wdenman@pgslegal.com

Anyone wishing to submit written comments should submit such comments by February 1, 2014 to:

William A. Denman, Esquire
Parkowski, Guerke & Swayze, P.A.
116 W. Water Street
Dover, DE 19904
(302) 678-3262
Email: wdenman@pgslegal.com

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

201 Delaware Manufactured Home Relocation Trust Fund Regulations

DEPARTMENT OF AGRICULTURE HARNES RACING COMMISSION

Statutory Authority: 3 Delaware Code, Section 10005 (3 **Del.C.** §10005)
3 **DE Admin. Code** 501

PUBLIC NOTICE

501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission, pursuant to 3 **Del.C.** §10005, proposes to change its Rules in Section 3, Section 5, Rule 7.6.13.1.16 and 7.6.13.1.17 and Section 8 including Rule 8.3.5.2, 8.5.5.17, 8.6.2.3 and 8.6.2.5. The Commission will hold a public hearing on the proposed rule changes at Dover Downs on February 11, 2014 at 10:15 am. Written comments should be sent to Mark Davis, Racing Administrator of the Delaware Harness Racing Commission, Department of Agriculture, 2320 South DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on January 1, 2014.

The proposed changes are for the purpose of updating the Rules to reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.html A copy is also available for inspection at the Harness Racing Commission office.

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

501 Harness Racing Rules and Regulations

DEPARTMENT OF EDUCATION OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 502

Education Impact Analysis Pursuant To 14 **Del.C.** Section 122(d)

502 Alignment of Local School District Curricula to the State Content Standards

A. Type of Regulatory Action Required

Amendment to Existing Regulation

B. Synopsis of Subject Matter of the Regulation

The Secretary of Education seeks to amend 14 **DE Admin. Code** 502 Alignment of Local School District Curricula to the State Content Standards. The amendments reflect process changes related to the demonstration of alignment of local school district curricula to the state content standards. This reduces the burden on the districts as well as the Department and also provides for flexibility based on the uniqueness of each district related to the development of local curricula.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before **February 5, 2014** to Susan Haberstroh, Associate Secretary, Department of Education, at 401 Federal Street, Suite 2, Dover, Delaware 19901. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. Impact Criteria

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amendments are intended to provide for the demonstration of local curricula alignment that should result in improvement of student achievement as measure against the state content standards.

2. Will the amended regulation help ensure that all students receive an equitable education? The amendments are intended to provide for an equitable education for all students.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amendments are related to the local curricula and not specifically the health and safety of all students.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amendments are intended to continue to ensure all students' legal rights are respected.

5. Will the amended regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The amendments preserve the necessary authority and flexibility of decision making at the local board level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amendments are intended to minimize any unnecessary reporting or administrative requirements or mandates upon the local board and school levels.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability does not change with these amendments.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amendments are consistent with and not an impediment to other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? The amendments are intended to reduce the burden on the districts.

10. What is the cost to the State and to the local school boards of compliance with the regulation? The regulation is in response to State Code. The amendments are intended to minimize the impact on personnel resources at the local board and school levels, while maintaining the purpose of the law.

502 Alignment of Local School District Curricula to the State Content Standards

1.0 Purpose

4-4 The purpose of this regulation is to provide a process through which all Delaware school districts demonstrate the alignment of their local curricula with the State Content Standards in the content areas specified in the 14 **DE Admin. Code** 501.

2.0 Definitions

~~“**Adoption**” means to accept a set of standards as the basis for curriculum and assessment alignment across the state according to a timeline established and disseminated by the Department of Education.~~

~~“**Alignment Index**” means a co-relational measure of alignment between the Survey of Enacted Curriculum in a specific content area and the state standards used for comparison. The Wisconsin Center for Educational Research automatically calculates and reports the alignment index to schools and districts that use the surveys.~~

~~“**Content Map**” means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.~~

~~“**Department**” means the Delaware Department of Education.~~

~~“**Evidence**” means certification by the district that their curriculum is aligned to the state content standards, which is supported by documentation maintained by the district.~~

~~“**Grade Level Expectations**” means the documents created and officially released by the Delaware Department of Education for English language arts, mathematics, science, and social studies which detail student learning objectives in each content area for kindergarten through grade twelve.~~

~~“**Recommended Statewide Uniform Curricula**” means one or more of the following documents: Academic Content Standards, Clarifications and Grade Level Expectations posted to the Delaware Department of Education website. The Department may update the document(s) based on changes to the State Content Standards in 14 DE Admin. Code 501.~~

~~“**Scope and Sequence**” means a curriculum plan, usually in chart form, with a range of instructional objectives and skills organized according to the successive levels at which they are taught.~~

~~“**Statewide Recommended Curriculum Frameworks**” means the Delaware Recommended Curriculum documents comprised of Academic Content Standards, Clarifications and Grade Level Expectations posted to the Delaware Department of Education website.~~

~~“**Survey of Enacted Curriculum (SEC)**” means the alignment survey sponsored by the Council of Chief State School Officers and the Wisconsin Center for Education Research. The SEC is a teacher survey tool based on scientifically based research which yields detailed information about the alignment of classroom instruction to state academic standards and state assessments. The survey is available for English language arts, mathematics, and science at the present time. A survey for social studies is in development. An analysis of results by grade level, school and district is completed by the Wisconsin Center for Educational Research with formal reports provided to the participating schools and districts.~~

~~“**Tile Chart**” means a graphic depiction of local curriculum alignment automatically reported to schools and districts as part of the analysis of teacher survey data by the Wisconsin Center for Educational Research.~~

~~“**Unit Summative Assessment**” means a performance measure of skills and knowledge mastered by students at the end of a unit as a result of classroom instruction. Examples of unit assessment measures include but are not limited to teacher constructed unit tests and commercially published measures such as those provided by curriculum publishers.~~

3.0 Alignment Requirement

- 3-1 All school districts shall provide evidence to the Department that their school district curricula are aligned with the State Content Standards. State Content Standards exist in English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, Physical Education, Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences. Content standards ~~as developed~~ adopted by the Department in the future shall also be included under this section

~~4.0 Use of the Statewide Recommended Curricula Frameworks~~

- ~~4.1 School districts shall utilize the Statewide Recommended Curricula Frameworks including the State Content Standards, Content Area Clarifications and Grade Level Expectations as guides to the development or revision of their local curricula, syllabi, and Scope and Sequence in the content areas listed in 3.0.~~

~~54.0 Documentation of Curriculum Alignment~~

- ~~5.1 Evidence of curriculum alignment to the State Content Standards shall be submitted to the Department no later than twelve (12) months following the official release by the Department of the Statewide Recommended Curriculum Frameworks in each content area.~~
- ~~5.2 Documentation of alignment of school district curriculum to the State Content Standards shall be submitted through evidence provided by the school districts on forms as developed and required by the Department.~~
- ~~5.3 Evidence of curriculum alignment submitted by school districts shall be subject to Department review during on-site monitoring visits.~~
- ~~4.1 Alignment of school district curricula to the State Content Standards shall be certified annually by the district through an assurance in the consolidated grant application.~~
- ~~4.2 Documentation of alignment of school district curricula shall include: unit plans, lesson plans, and assessments; and may be subject to Department review during on-site monitoring visits. Included in the documentation shall be a description of the method and level of involvement in the alignment process by building administrators, teachers and specialists.~~
- ~~4.3 Documentation for Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences shall follow requirements through 14 DE Admin. Code 525 for Career and Technical Education.~~

5.0 Documentation for Specific Student Populations

As part of its documentation, the district shall explain modifications or enhancements to curricula for specific subgroups such as students with disabilities, gifted students, English learners or any other special population of students and certify alignment to the State Content Standards.

~~6.0 Criteria for the Evaluation of the Alignment~~

- ~~6.1 School districts shall be required to submit evidence of local curriculum alignment for English Language Arts, Mathematics, Social Studies, Science, World Languages, Visual and Performing Arts, Health, and Physical Education content areas for each grade cluster K to 2, 3 to 5, 6 to 8 and 9 to 12 from at least two of the permissible categories of evidence in 6.1.1 through 6.1.5. **One** of the two categories shall be the evidence described in 6.1.1. The second required category and any additional submitted evidence shall be selected by the district from categories 6.1.2 through 6.1.5. The school district may choose to vary the choice of the second category of evidence by grade cluster level. School districts shall be required to submit evidence of local curriculum alignment for Career and Technical Education content areas (Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences) from the permissible category of evidence in 6.1.6. Evidence of alignment to each standard in a given content area shall be submitted.~~
- ~~6.1.1 Category 1 is a narrative describing the local curriculum alignment evidence and the extent to which it addresses all student subgroups. For English language arts, mathematics, science and social studies, a required element of this narrative shall be an analysis of school district disaggregated student performance data on state assessments over the most recent three year period of available state assessment data.~~
- ~~6.1.2 Category 2 is the Grade level result (all teachers in at least one grade per grade cluster K to 2, 3 to 5, 6 to 8 and 9 to 12 of the Survey of Enacted Curriculum for the content area under consideration.~~

The SEC results shall demonstrate an Alignment Index of .50 or higher, and include a graphic summary including either a Tile Chart or Content Maps.

- 6.1.3 Category 3 is three (3) units of study from a specific grade cluster, accompanied by the corresponding summative unit assessment and scoring rubric, and matrix table detailing applicable content standards, grade level expectations and course expectations for all students served in the grade cluster.
 - 6.1.4 Category 4 is an external formal curriculum alignment report detailing a review of local instruction and documentation of standards alignment. The district is required to submit three (3) sample units and three (3) corresponding unit summative assessments, and a narrative detailing how all students served in the grade cluster receive standards aligned instruction. The district is required to submit the curriculum audit contractor's credentials.
 - 6.1.5 Category 5 is a formative assessment benchmarking system with grade cluster Scope and Sequence, including three sample units from the grade cluster. The district is required to submit (1) a narrative detailing evidence of alignment of formative student assessment or assessments to the State Content Standards and (2) sample assessment items in the content area.
 - 6.1.6 Category 6 is curriculum alignment evidence specific to Career and Technical Education content areas. Evidence for Agriscience, Business Finance and Marketing Education, Technology Education, Skilled and Technical Sciences, and the Family and Consumer Sciences shall be submitted as required through 14 **DE Admin. Code** 525 for Career and Technical Education.
- 6.2 Required documentation for specific student subpopulations
- 6.2.1 As part of its submitted evidence, the district shall make detailed comments on the extent to which any modification or enhancement of the instructional program for specific subgroups such as students with disabilities, gifted students, English language learners or any other special population of students is aligned to the State Content Standards in the content area where there have been modifications or enhancements.

7.0 Participation of Building Level Staff

- 7.1 All school districts shall describe and document to the Department the method and the level of involvement in the alignment process by their building administrators, teachers and specialists.

8.0 Subsequent Review of Alignment

- 8.1 Each district shall be required to ~~present evidence of~~ certify curriculum alignment if there are major changes to a content area in the approved curricula. The district shall only be required to submit ~~evidence~~ documentation of curriculum alignment in the affected content area upon request by the Department. Further, districts ~~placed under school improvement~~ may be required to submit ~~evidence~~ documentation of aligned curriculum in the assessed content area or areas which form the basis for the any school improvement rating.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 1517

PUBLIC NOTICE

Educational Impact Analysis Pursuant to 14 Del.C. Section 122(d)

1517 Paraeducator Permit

A. TYPE OF REGULATORY ACTION REQUESTED

Amendment to Existing Regulation

B. SYNOPSIS OF SUBJECT MATTER OF REGULATION

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1517 ParaEducator Permits. The regulation applies to the issuance of a Paraeducator Permit, pursuant to 14 **Del.C.** §1205. It is necessary to amend this regulation in order to update and clarify some of the definitions, requirements and to update the application procedures. The proposed amendments, update the application procedures to streamline the process and eliminate the requirement that applicants apply via their employing district and allow applicants to submit their application directly to the Department of Education. The current regulation only requires a high school diploma or the recognized equivalent for both a service and instructional paraeducator. The proposed amendments set a higher standard for Instructional paraeducators, strengthening the entrance requirements to align with the requirements for Title I Paraeducators. While there is no specific grandfathering provision in the amendments, paraeducators currently holding the Instructional Paraeducators permit may continue with their current permit as long as they renew their permit and do not allow it to expire. If a paraeducator allows their permit to expire, they will need to reapply and will be subject to the new requirements for Instructional Paraeducator Permits.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on the 31st day of January, 2014 to Donna Lee Mitchell, Executive Director, Delaware Professional Standards Board, The Townsend Building, 401 Federal Street, Dover, Delaware 19901. Copies of this regulation are available from the above address or may be viewed at the Professional Standards Board Business Office.

C. IMPACT CRITERIA

1. Will the amended regulation help improve student achievement as measured against state achievement standards? The amended regulation addresses student achievement by establishing standards and expectations for paraeducators who provide support services, or instructional assistance or support in the classroom or laboratory; provides one-on-one or small group instruction; assists in training and support with functional skill activities, such as personal care or assistive technology; or provides instructional services to students under the direct supervision of a teacher contributing to the improvement of student achievement.

2. Will the amended regulation help ensure that all students receive an equitable education? The amended regulation helps to ensure that all paraeducators employed to assist students meet high standards and have acquired the prescribed general knowledge, skill and/or education to support in a particular area, as a Service, Instructional or Title I paraeducator.

3. Will the amended regulation help to ensure that all students' health and safety are adequately protected? The amended regulation addresses paraeducator permitting, not students' health and safety.

4. Will the amended regulation help to ensure that all students' legal rights are respected? The amended regulation addresses paraeducator permitting, and addresses students' legal rights within the realm of their role as a paraeducator.

5. Will the amended regulation preserve the necessary authority and flexibility of decision-makers at the local board and school level? The amended regulation will preserve the necessary authority and flexibility of decision makers at the local board and school level.

6. Will the amended regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The amended regulation will not place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels.

7. Will decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision-making authority and accountability for addressing the subject to be regulated, rests with the Professional Standards Board, in collaboration with the Department of Education, and with the consent of the State Board of Education.

8. Will the amended regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The amended regulation will be consistent

with, and not an impediment to, the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies.

9. Is there a less burdensome method for addressing the purpose of the amended regulation 1517? 14 **Del.C.** requires that we promulgate this regulation for Paraeducator Permits.

10. What is the cost to the state and to the local school boards of compliance with the adopted regulation? There is no additional cost to local school boards for compliance with the regulation. Job descriptions, permit requirements and corresponding pay are set by the employing authority. The permit requirements for Service Paraeducator remain the same in this proposed amended regulation. A school district or charter may choose to require personnel possess a service permit rather than the instructional permit if the new requirements for Instructional Paraeducator trigger and increase in personnel costs.

1517 Paraeducator Permit

1.0 Content

This regulation shall apply to the issuance of a Paraeducator Permit, pursuant to 14 **Del.C.** §1205(a). This Permit is required of Title I Paraeducators, Instructional Paraeducators, and Service Paraeducators employed, either full time or part time in support positions in public schools. This Permit is required of all Paraeducators, regardless of employment date.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

“Associate's or Higher Degree” means that the degree is conferred by a regionally accredited institution of higher education or by a distance education institution that is regionally accredited, or any other accrediting agency the Delaware Secretary of Education deems within his or her discretion, to be reliable or equivalent to a regional accrediting agency.

“Completed at Least 2 Years of Study at an Institution of Higher Education” means the satisfactory completion of a minimum of sixty (60) semester hours of instruction at a regionally accredited institution of higher education or by a distance education institution that is regionally accredited, or any other accrediting agency the Delaware Secretary of Education deems within his or her discretion, to be reliable or equivalent to a regional accrediting agency, in general or educational studies, including reading, writing, and mathematics content and pedagogy, unless the institution of higher education defines two (2) years of full time study as the successful completion of a minimum of forty-eight (48) semester hours, and provides documentation of such definition.

“Department” means the Delaware Department of Education.

“Immorality” means conduct which is inconsistent with the rules and principles of morality expected of an educator and may reasonably be found to impair an educator's effectiveness by reason of his or her unfitness or otherwise.

“Instructional Paraeducator” means a public school employee who provides one-on-one or small group instruction; assists with classroom management or individual student behavior; provides assistance in a computer laboratory; provides support in a library or media center; assists in training and support with functional skill activities, such as personal care or assistive technology; or provides instructional services to students under the direct supervision of a teacher. Instructional Paraeducators are those working with regular education students and students with disabilities in schools other than Title I schoolwide schools or with students not receiving Title I services in Title I targeted assistance schools.

“Paraeducator”, as used herein, means a paraprofessional, as it is used in 14 **Del.C.** §1205. Paraeducators are not "educators" within the meaning of 14 **Del.C.** §1202(4).

“Permit” means a document issued by the Department that verifies an individual's qualifications and training to serve as a Title I, Instructional or Service Paraeducator.

PROPOSED REGULATIONS

“**Secretary**” means the Secretary of the Delaware Department of Education.

“**Service Paraeducator**” means a public school employee who provides support services other than instructional assistance to students, but does not include bus aides (See 14 **DE Admin. Code** 1105).

“**Standards Board**” means the Professional Standards Board of the State of Delaware as established in response to 14 **Del.C.** §1205.

“**State Board**” means the State Board of Education of the State of Delaware established in response to 14 **Del.C.** §104.

“**Title I Paraeducator**” means a public school employee who provides one on one or small group instruction; assists with classroom management; provides assistance in a computer laboratory; provides support in a library or media center; or provides instructional services to students under the direct supervision of a teacher. Additionally, Title I Paraeducators are all Instructional Paraeducators who work with regular students and children with disabilities in Title I schoolwide schools and all Title I Paraeducators who work with children receiving Title I services in Title I targeted assistance schools, except those whose duties are limited to acting as a translator or as a home school liaison.

3.0 Title I Paraeducators and Instructional Paraeducators

3.1 A Title I Paraeducator must hold a Title I Paraeducator Permit. An Instructional Paraeducator must hold an Instructional Paraeducator Permit.

3.1.1 In accordance with 14 **Del.C.** §1205(a), the Department shall issue a Title I Paraeducator Permit to an applicant who has met the following:

3.1.1.1 Completion of at least two (2) years of study in general or educational studies at an institution of higher education; or

3.1.1.2 Receipt of an associate's or higher degree; or

3.1.1.3 Completion of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.

3.1.1.3.1 Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:

3.1.1.3.1.1 Para Pro assessment with a qualifying score of 459 or higher.

3.1.1.3.1.2 Such alternative as may be established by the Standards Board, with the approval of the State Board; and

3.1.1.4 Submits sufficient verifiable evidence of qualifications to the Department and meets all the requirements.

3.1.2 In accordance with 14 **Del.C.** §1205(a), the Department shall issue an Instructional Paraeducator Permit to an applicant who has met the following:

3.1.2.1 Completion of at least two (2) years of study in general or educational studies at an institution of higher education; or

3.1.2.2 Receipt of an associate's or higher degree; or

3.1.2.3 Completion of a high school diploma or its recognized equivalent, and a passing score on a rigorous assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics.

3.1.2.3.1 Assessments which are accepted as providing evidence of knowledge and ability to assist in the instruction in reading, writing, and mathematics include:

3.1.2.3.1.1 Para Pro assessment with a qualifying score of 459 or higher.

3.1.2.3.1.2 Such alternative as may be established by the Standards Board, with the approval of the State Board; and

3.1.2.4 Submits sufficient verifiable evidence of qualifications to the Department and meets all the requirements.

3.2 Application Procedures.

- 3.2.1 ~~The district, charter school, or other employing authority shall~~ applicant must submit ~~the a~~ Department approved application, ~~form,~~ The applicant must include official transcripts or official scores on an assessment of knowledge of, and the ability to assist in, the instruction in reading, writing, and mathematics, ~~to the Department on behalf of the applicant.~~ ~~The district, charter school or other employing authority applicant shall certify as part of the application form that the applicant, in their opinion, meets the requirements of Section 3.0 that answers on the application are true and accurate.~~
- 3.2.1.1 Official transcripts shall be forwarded directly from the issuing institution or by the applicant in an unopened, unaltered envelope ~~to the district, charter school or other employing authority.~~
- 3.2.1.2 Test scores shall be official and sent directly from Educational Testing Service or other test vendor ~~to the district, charter school or other employing authority.~~ Unopened, unaltered envelopes containing test scores sent to an individual may be accepted as official. The Department shall determine whether the scores, as presented, are acceptable.
- ~~3.2.2 Unemployed applicants shall submit sufficient verifiable evidence of qualifications to the Department.~~

4.0 ~~Instructional Paraeducators and Service Paraeducators~~

- 4.1 All ~~Instructional Paraeducators and Service Paraeducators~~ Must Hold the Appropriate Permit in accordance with 14 **Del.C.** §1205(a).
- 4.2 The Department shall issue a Permit to ~~an Instructional Paraeducator applicant or a Service Paraeducator applicant for whom the district, charter school, or other employing authority~~ has submitted a Department approved application form and who provides evidence of a high school diploma or its recognized equivalent.

5.0 Validity

- 5.1 Unless stated otherwise herein, a Title I, Instructional, or Service Paraeducator Permit shall be valid for five (5) years from the Date of Issuance.
- 5.2 The Department shall renew a Paraeducator Permit, valid for an additional five (5) years, to a Paraeducator ~~whose school district, charter school, or other employing authority~~ provides evidence ~~to the Department~~ of successful completion of a minimum of fifteen (15) clock hours of approved professional development.
- 5.3 The paraeducator is required to complete Fifteen (15) clock hours of approved professional development ~~is required to be completed~~ during the term of validity of the Paraeducator Permit.

6.0 Options for Renewal

- 6.1 Options for Renewal: are listed in Sections 6.2 and 6.3. These professional development activities are approved options for the renewal of a Paraeducator Permit. Unless otherwise stated, there is no limit to the number of hours that may be taken in any of the options listed below:
- 6.2 Options listed in Section 6.2 shall be valid for paraeducators holding a Permit whose expiration date does not exceed December ~~19~~ 10, 2015.
- 6.2.1 College credit completed at a regionally accredited college or university with a grade of "C" or better or a "P" in a pass or fail course (One [1] semester hour equals fifteen (15) clock hours).
- 6.2.2 Planned school professional development day (maximum six (6) clock hours per day).
- 6.2.3 Professional conference, workshop, institute, or academy that contributes to the participant's knowledge, competence, performance, or effectiveness as a paraeducator (verified clock hours actively involved in workshop or conference sessions).
- 6.2.4 Participation on a school, district, or state sponsored committee which has as its focus curriculum, instruction, or school or district improvement (verified clock hours of service or experience).

PROPOSED REGULATIONS

- 6.3 Educators holding a Paraeducator Permit whose expiration date does not exceed December 10, 2015 may also use the Paraeducator Permit renewal options listed in Section 6.3.
- 6.3.1 College courses taken at a regionally accredited College or University. College or University Credit shall be taken for credit and the educator shall attain a grade of "C" or better in the course, or a "P" in Pass / Fail course. [One (1) semester hour equals fifteen (15) clock hours.]
- 6.3.2 Professional development programs targeting curriculum, instruction, assessment, school climate, or other identified need.
- 6.3.3 A Committee, Professional Learning Community (PLC), Conference, Workshop, Institute or Academy that contribute to the participant's knowledge and skills, competence, performance or effectiveness in education that are directly connected to the school, district or charter school's Success Plan or State initiative. This option includes workshops offered by districts or other employing authorities either as part of a professional development day or during after school hours.
- 6.4 Options listed in Section 6.2 for the renewal of a Paraeducator Permit shall expire on December 10, 2015.
- 6.5 Educators either receiving their original Paraeducator Permit after December 11, 2010 or upon renewing their Paraeducator Permit on or after December 11, 2010 shall use the options listed in Section 6.3.

7.0 Criminal Conviction History

- 7.1 An applicant shall disclose his or her criminal conviction history upon application for any Paraeducator Permit.
- 7.2 Failure to disclose a criminal conviction history is grounds for denial or revocation of a Paraeducator Permit as specified in 14 **Del.C.** §1219.

8.0 Denial and Revocation

- 8.1 ~~A Paraeducator Permit~~ An applicant may be denied ~~an applicant a paraeducator permit~~ upon a finding that ~~an the~~ applicant has failed to meet the requirements set forth herein or is unfit to be issued a permit in the State.
- 8.2 A Paraeducator Permit may be revoked upon the dismissal of the permit holder for immorality, misconduct in office, incompetence, willful neglect of duty or disloyalty, and must be revoked upon a finding that the permit holder made a materially false or misleading statement in his or her permit application.
- 8.3 A Paraeducator whose Permit has been denied or revoked may file a request for a hearing with the Secretary within ten (10) days of receipt of the notice of denial or revocation.
- 8.3.1 The Secretary's decision shall be final.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

PUBLIC NOTICE

1915(i) Home and Community-Based Services State Plan Option Amendment

In accordance with the requirements of 42 U.S.C. §1396a (a)(13) and 42 CFR §447.205, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA) provides notice to the public that it

intends to submit a 1915(i) Home and Community-Based Services (HCBS) State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) to offer HCBS as an optional state plan benefit.

The public is invited to review and comment on the State's proposed 1915(i) State Plan concept paper and amendment request. Written comments may be sent to: Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or via fax to 302-255-4425. For consideration, written comments must be received by 4:30 p.m. on January 31, 2014. Please identify in the subject line: Proposed 1915(i) Home and Community-Based Services State Plan Amendment.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The proposed provides notice to the public that the Division of Medicaid and Medical Assistance (DMMA) intends to submit a 1915(i) Home and Community-Based Services (HCBS) State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) to offer HCBS as an optional state plan benefit.

Statutory Authority

42 U.S.C. §1396a (a)(13) and 42 CFR §447.205

Background

Section 6086 of the Deficit Reduction Act of 2007 (DRA) and the Affordable Care Act (ACA) of 2010 established and amended section 1915(i) of the Social Security Act to add an optional State Plan service that has many of the features of a Home and Community Based (HCBS) Waiver. Like an HCBS waiver, states can target services to persons based on age, diagnosis and condition, and also apply functional criteria such as limitations caused by disability. States can also provide community based services that would not otherwise be able to be covered under the Medicaid State Plan to allow persons to live independently in the community. Two notable differences from HCBS waivers are that a 1915(i) State Plan Amendment does not require individuals to meet an institutional level of care in order to qualify for HCBS and states are not permitted to limit participation in the program once an individual meets established eligibility criteria.

Purpose and Rationale

The Department proposes to provide a set of services and supports to enable individuals with physical disabilities, intellectual disabilities, autism spectrum disorder, Aspergers Syndrome and visual impairment to seek and maintain competitive employment. The program is called Pathways to Employment (Pathways). The benefit is targeted to transition-age individuals, ages fourteen (14) to twenty-five (25), across the spectrum of disabilities to put into practice the State's Employment First Act. The Pathways program will expand choices and opportunities in Delaware for individuals seeking to enter the job market while ensuring investments made by the public education system are not lost. Using the 1915(i) HCBS SPA presents a unique opportunity in Medicaid to serve individuals in identified target groups and to structure a cross-disability, employment-focused benefit based on work-related, needs-based criteria.

The Pathways to Employment program will be jointly administered by the Division of Developmental Disabilities Services (DDDS), Division of Services for Aging and Adults with Physical Disabilities (DSAAPD) and Division for the Visually Impaired (DVI). The Division of Medicaid and Medical Assistance (DMMA) will provide oversight. While the goal of competitive employment crosses all of the partnering Divisions, the supports needed to effectively meet the needs of the target groups require disability-specific expertise and knowledge. Pathways is designed to establish common goals, expectations, and opportunities for individuals with disabilities, while

providing individually tailored supports, reflective of population-specific considerations, to meet the specific needs of the persons served.

Goals and Objectives of Pathways to Employment

Pathways will expand the choices available within Delaware for individuals ages fourteen (14) to twenty-five (25) who seek employment opportunities for individualized, competitive jobs. Ensuring seamless transitions from school (high school and post-secondary) to work, and across the array of employment options and supports, Pathways will enable individuals to gain skills needed to obtain and maintain employment, and continue to build their careers.

The Pathways program:

- Serves low income individuals, across disabilities, who have a desire to work in a competitive work environment;
- Provides individually tailored services for individuals with visual impairments, physical disabilities, intellectual disabilities, autism spectrum disorder and Aspergers to help them obtain or sustain competitive employment;
- Offers an array of services that will support individuals to explore and plan career paths and build career readiness. Pathways will include important services such as on-the-job supports, transportation, personal care, orientation and mobility training, assistive technology and employment navigation to help individuals maintain employment based on their specific needs;
- Stretches limited state dollars by partnering with the Federal government in the provision of these services - thereby, increasing individual independence and strengthening the State's workforce; and
- Provides a strong foundation for Delaware's ongoing efforts to ensure that individuals with disabilities have a clear path to employment now and into the future.

Proposed 1915(i) HCBS State Plan Amendment

Pathways will increase the options available to support Medicaid individuals aged fourteen (14) to twenty-five (25) with disabilities who wish to work. Income eligibility will generally be the same for most individuals, however individuals participating through certain income groups that allow for higher income levels will be able to have incomes at or below 150% of the Federal Poverty Level (FPL). The 1915(i) HCBS SPA will provide an unprecedented opportunity within Medicaid to serve individuals based on need rather than on diagnosis alone.

Pathways will target the following groups:

- Individuals with visual impairments
- Individuals with physical disabilities, which may include individuals with brain injury
- Individuals with intellectual disabilities, individuals with autism spectrum disorder and individuals with Aspergers

Using needs based criteria that must be less stringent than institutional level of care criteria, per the 1915(i) requirements, Delaware will make the benefit available to anyone in the target groups who has a desire to work in a competitive work environment and for whom the services provided through the benefit are not otherwise available to the individual under either special education and related services as defined in section 602(16) and (17) of the Education of the Handicapped Act (20 U.S.C. 1401(16) and (17)) or vocational rehabilitation services available to the individual through a program funded under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730). This is a federal requirement.

Pathways will offer a rich continuum of services to assist individuals to build skills needed and to obtain and maintain individualized, competitive employment. The service array provided through Pathways recognizes that each individual may need specific and individualized supports to better position them for ongoing employment. Delaware has specially designed service packages for the target groups to ensure that the right services are available based on population needs.

The following array of services will be offered to prepare individuals for competitive work environments as well as providing the employment supports for individuals to be successful:

- Career exploration and assessment
- Supported employment (small group)
- Supported employment (individual)
- Employment Navigators
- Benefits Counseling
- Financial Coaching
- Non-Medical Transportation
- Personal Care (including a self-directed care option)
- Orientation, mobility, assistive technology

Pathways will be operated as a fee-for-service program administered by the DHSS, the Single State Medicaid Agency. The Divisions noted above will jointly administer the program. Using a standard evaluation, enrollment and assessment process, with tailoring for each of the target groups, to determine eligibility and to inform a person-centered care planning approach, DHSS will ensure consistency in operations for each of the target groups, while still maintaining the key expertise needed to effectively meet their needs. The Divisions will ensure standards and quality for the administration of the Pathways to Employment program through the newly-established cross-division workgroup, which will provide ongoing oversight for the benefit. These entities will also ensure ongoing quality improvement, measuring the efficacy of the overall systems and the effectiveness of individually tailored service strategies.

Pursuant to the notice requirements of 42 CFR §447.205, Delaware Health and Social Services/Division of Medicaid and Medical Assistance hereby affords the public notice of the intent to solicit public comment on the Department's proposal to request a 1915(i) Home and Community-Based Services (HCBS) State Plan amendment to offer HCBS as an optional state plan benefit to support Medicaid-covered individuals aged fourteen (14) to twenty-five (25) with disabilities who wish to seek competitive employment. The effective date for statewide implementation of the 1915(i) HCBS State Plan Amendment is July 1, 2014, subject to approval by the Centers for Medicare and Medicaid Services.

Draft of Proposed 1915(i) HCBS State Plan Amendment and Concept Paper

A copy of Delaware's proposed 1915(i) HCBS Concept Paper and a copy of the proposed 1915(i) HCBS State Plan Amendment is accessible on the Division of Medicaid & Medical Assistance website at:

<http://www.dhss.delaware.gov/dhss/dmma/>

Fiscal Impact Statement

With the availability of these services through 1915(i), Delaware expects that there will be a reduction in federal claims for services currently provided under the State Plan Rehabilitation benefit.

Through the identification of existing resources, the expectation is that there will be no net new General Fund cost to the State of Delaware in State Fiscal Year 2014 and the net new funds needed in State Fiscal Year 2015 will be approximately \$380,000.00.

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(c), (16 Del.C. §122(3)(c))
16 DE Admin. Code 4463

PUBLIC NOTICE

4463 Licensing and Registration of Operators of Public Water Supply Systems

Health Systems Protection, Office of Drinking Water, Division of Public Health, has proposed amendments to the State of Delaware Regulations Governing the Licensing and Registration of Operators of Public Water Supply Systems. Amendments include the establishment of two new license categories, a limited license for small systems

and a distribution system operator license. We are also proposing to raise the passing grade for examinations from 70% to 75%, require all operators to obtain 20 hours of continuing education each year, require half of all continuing education credits be directly related to operation, treatment or distribution of potable water as well as makes technical corrections to previously adopted federal regulations. In addition, the disciplinary procedures section has been revised to better comply with the administrative procedures act. Due to the extensive number of amendments the Division has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

On January 1, 2014, the Division plans to publish proposed amendments to the Delaware Regulations Governing the Licensing and Registration of Operators of Public Water Supply Systems and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the January 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Drinking Water at (302) 741- 8630.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Monday, February 3, 2014 at:

Deborah Harvey
Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us
Phone: (302) 744-4700

Summary of proposed changes to Operator Certification Regulations

§2.0 Definitions – Noting that an operator must be fully licensed for one year before being designated as a Direct Responsible Charge and added definitions for Distribution System, Hands-on and Leadership.

§§4.1.1, 4.2.1, 4.3.1, 4.4.1, and 4.6.1 - Deleting language regarding two years following the effective date as this is no longer necessary.

§4.6.1 – Requiring more timely notification when a water system adds, deletes or makes other changes to the direct responsible charge. Notification to the Division must be within 24 hours instead of 30 days.

§5.2.1.7 – Approved Sampler/Tester – added as an additional endorsement category

§5.3 – Distribution System Operator classification shall be established

§6.1.2.3 – Limited License – is being added as a new category of licensing. This category is designed to help small water systems with minimal treatment.

§6.2.2 - OIT is being reduced to a one year license

§6.2.2.1 – An OIT must be employed for one year before being eligible for full licensure.

§6.2.2.2 – An OIT must submit an application for full licensure.

§6.2.3 – Limited License – Provides requirements for limited licensure

§6.2.4 – Distribution System Operator – Provides requirements for licensing

§7.1.6.1 – Provides that letters issued to operators prior to June 1, 2000 when licenses were first issued shall not be deemed as letters of an award of a license.

§7.3.2 – adds limited license and distribution water license to continuing education requirements and requires a minimum of 20 hours for all license holders.

§7.3.2.1 – Requires half of CEUs need to be directly related to waterworks operation, treatment or distribution.

§8.0 Statement of Ethics – new section requested by Advisory Council

§11.0 – Revised disciplinary procedures to be more consistent with the Administrative Procedures Act.

§12.0 – Penalty clause - Clarified this section to be consistent with other regulations and Delaware Code.

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

4463 Licensing and Registration of Operators of Public Water Supply Systems

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

OFFICE OF THE SECRETARY

Statutory Authority: 7 Delaware Code, Chapter 79; (7 Del.C., Ch. 79)
7 DE Admin. Code 103

REGISTER NOTICE

SAN #2013-34

103 Chronic Violator Regulation

1. TITLE OF THE REGULATIONS:

Chronic Violator Regulation, 7 DE Admin. Code 103

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

The Regulation has been rendered moot by the passage of legislation (Senate Bill 92) in 2012 that amended state law and eliminated the Department's role as proposing and determining whether a party is a chronic violator. Under the amended law, DNREC proposes the designation to the Environmental Appeals Board. The most recent changes in the law spell out the process and alleviate the need for the regulations. This action is based on a recommendation by the Department of Justice to repeal the regulation in its entirety. Therefore, the Chronic Violator Regulation is proposed to be deleted from the Administrative Code.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

This regulation is being proposed for repeal.

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

7 Del. Code Chapter 79

The regulation is proposed for repeal.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The Department of Natural Resource and Environmental Control Office of Community Services will hold a public hearing to accept comments on the proposed repeal of the Chronic Violator Regulation on February 3, 2014 at 6:00 p.m. in the auditorium of the Richards and Robbins Building located at 89 Kings Highway, Dover, DE 19901. Written comments on the proposed repeal will be accepted until February 18, 2014 and may be submitted to Jenny Bothell, DNREC Office of Community Services, 89 Kings Highway, Dover, DE 19901, or by sending an email to Jennifer.Bothell@state.de.us.

7. PREPARED BY:

Jenny Bothell

Jennifer.Bothell@state.de.us

302-739-9000

***Please Note:** Since the regulation is being repealed, it is not being published here. A copy of the regulation is available at:

103 Chronic Violator Regulation

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapters 60 and 63; (7 Del.C., Ch. 60 and 63)
7 DE Admin. Code 1302

REGISTER NOTICE

SAN #2013-35

1302 Regulations Governing Hazardous Waste**1. TITLE OF THE REGULATIONS:**

Delaware's *Regulations Governing Hazardous Waste (DRGHW)*

2. BRIEF SYNOPSIS OF THE SUBJECT, SUBSTANCE AND ISSUES:

To improve flexibility and service to the regulated community, the Solid and Hazardous Waste Management Section (SHWMS) proposes to add compliance self-certification provisions to DRGHW. This amendment will enable the SHWMS to offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

3. POSSIBLE TERMS OF THE AGENCY ACTION:

None

4. STATUTORY BASIS OR LEGAL AUTHORITY TO ACT:

Amendments to DRGHW are proposed and amended in accordance with the provisions found at 7 **Delaware Code**, Chapters 60 and 63.

5. OTHER REGULATIONS THAT MAY BE AFFECTED BY THE PROPOSAL:

None

6. NOTICE OF PUBLIC COMMENT:

The public hearing on the proposed amendment to DRGHW will be held on Monday, January 27, 2014 from 6:00 p.m. to 6:30 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

7. PREPARED BY:

Bill Davis, Environmental Scientist, Solid and Hazardous Waste Management Section - (302) 739-9403

1302 Regulations Governing Hazardous Waste

ID #	Description
1	Self-Certification provisions

AMENDMENT: Self-Certification Provisions

Delaware is proposing to modify 262.43 to require any generator of hazardous waste who receives a Self-Certification Checklist from the Department to complete and return the checklist to the Department. This amendment will enable the Solid and Hazardous Waste Management Section SHWMS to offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

Section 262.43 Additional Reporting.

(a) The Secretary, as he deems necessary under 7 **Del.C.** §6305(a)(10), may require generators to furnish additional reports concerning the quantities, management, and disposition of wastes identified or listed in Part 261.

(b) Any generator of hazardous waste who receives a Self-Certification Checklist from the Department shall complete and return the checklist within the time specified in the instructions provided by the Department.

(1) The Department shall provide generators a reasonable amount of time to complete and return a checklist. At a minimum, the generator shall have 14 days from the date of receipt to return the checklist. A checklist is deemed returned on the date it is received by the Department.

(2) The Self-Certification Checklist shall contain a certification in substantially the following form, which must be signed by an authorized representative of the generator:

"I, the undersigned representative, certify that I have personally examined and am familiar with the information contained in this submittal. The information contained in this submittal is to the best of my knowledge, true, accurate, and complete in all respects. I am fully authorized to make this certification on behalf of this generator. I am aware that there are significant penalties including, but not limited to, possible fines and imprisonment for willfully submitting false, inaccurate, or incomplete information."

PROPOSED REGULATIONS

DIVISION OF WATER

Statutory Authority: 7 Delaware Code, Section 6010 (7 Del.C. §6010)
7 DE Admin. Code 7401

REGISTER NOTICE

7401 Surface Water Quality Standards

Brief Synopsis of the Subject, Substance and Issues:

The amended Surface Water Quality Standards presented here are the result of a review of the Standards that started with Start Action Notice #2013-32 in 2013. Department staff reviewed factors affecting human health criteria, Environmental Protection Agency (EPA) documents, staff recommendations, and documents related to site-specific criteria for the tidal Murderkill River. A markup of proposed amendments to the Surface Water Quality Standards was prepared for the Register. To ensure compliance with the Clean Water Act and EPA regulations, the State of Delaware, in accordance with 7 Del.C. §6010, will amend the State of Delaware Surface Water Quality Standards.

Possible Terms of the Agency Action:

N/A

Statutory Basis or Legal Authority to Act:

7 Del.C. Section 6010

List of Other Regulations That May be Impacted or Affected by the Proposal:

Regulations Governing the Control of Water Pollution

Notice of Public Comment:

A public hearing on these regulations is scheduled for 5:00 PM on January 22, 2014 in the DNREC Auditorium located in the Richardson & Robbins Building at 89 Kings Highway, Dover, DE, with comments accepted until February 6, 2014.

Additional information, copies of the regulation and supporting documents are available on the internet at this URL: <http://www.dnrec.state.de.us/DNREC2000/Divisions/Water/WaterQuality/Standards.htm>. To request a copy of the proposed revisions to the regulations please contact David Wolanski, Watershed Assessment and Management Section at (302) 739-9939 or by email at david.wolanski@state.de.us.

The procedures for adopting regulations are established in 7 Del.C. §6006 and 29 Del.C. Chapter 101. Inquiries regarding comments should be directed to Robert Haynes at (302) 739-9039. Written comments should be addressed to: David Wolanski, Watershed Assessment and Management Section, Silver Lake Plaza-Suite 220, 820 Silver Lake Blvd, Dover, DE 19904-2464. Electronic versions of comments are preferred; please e-mail comments to David Wolanski at david.wolanski@state.de.us

7401 Surface Water Quality Standards

(Break in Continuity of Sections)

4.0 Criteria To Protect Designated Uses

(Break in Continuity Within Section)

4.5 The following criteria shall apply outside approved regulatory mixing zones unless otherwise specified:

(Break in Continuity Within Section)

- 4.5.2 Dissolved Oxygen, measured as milligrams per liter (mg/L)
(Break in Continuity Within Section)
- 4.5.2.5 All Waters The Murderkill River from the Route 1 Bridge to the Confluence with the Delaware Bay
- 4.5.2.5.1 ~~In cases where natural conditions prevent attainment of these criteria, allowable reduction in dissolved oxygen levels as a result of human activities shall be determined through application of the requirements of Sections 5 and 9 of these Standards. For the period from May 1 through September 30:~~
- 4.5.2.5.1.1 Daily average shall not be less than 3.0 mg/L
- 4.5.2.5.1.2 Instantaneous Minimum: One Hour average shall not be less than 1.0 mg/L
- 4.5.2.5.2 ~~The Department may mandate additional limitations on a site specific or seasonal basis in order to provide incremental protection for early life stages of fish. For the period October 1 through April 30, applicable criteria for all waters of the State shall apply.~~
- 4.5.2.6 All Waters
- 4.5.2.6.1 In cases where natural conditions prevent attainment of these criteria, allowable reduction in dissolved oxygen levels as a result of human activities shall be determined through application of the requirements of Sections 5 and 9 of these Standards.
- 4.5.2.6.2 The Department may mandate additional limitations on a site specific or seasonal basis in order to provide incremental protection for early stages of fish.
- 4.5.3 pH, measured in standard units, in all waters of the state
- 4.5.3.1 Shall be between 6.5 and 8.5 unless outside this range due solely to natural conditions. Where within this range, maximum human-induced change from background shall be 0.5 Standard Units; pH which results from human-induced change must remain within this range.
- 4.5.3.2 Where pH is below 6.5 or above 8.5 due solely to natural conditions, it shall not be lowered (where below 6.5) or raised (where above 8.5) more than 0.3 Standard Units due to human-induced changes.
- 4.5.4 Alkalinity, measured as mg/L as CaCO₃, in all waters of the State shall not be less than 20 mg/L unless due solely to natural conditions. If less than 20 mg/L due solely to natural conditions, no reduction due to human-induced changes is allowed.
- 4.5.5 Turbidity Measured as Nephelometric or Formazin Turbidity Units, in all waters of the State shall not exceed natural levels by more than 10 units.
- 4.5.6 Water Clarity in the ~~The~~ Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River:
- During the period of April 1 to October 31 the minimum seasonal averaged secchi depth shall be 1.0 m.
- 4.5.6.1 Chlorophyll-a criteria for the Nanticoke River from the upstream-most limits of the City of Seaford to the Maryland State Line and Broad Creek from the upstream-most limits of the Town of Laurel to the confluence with the Nanticoke River:
- Concentrations of chlorophyll-a in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in ecologically undesirable consequences - such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of species deemed potentially harmful to aquatic life or humans or aesthetically objectionable conditions or otherwise render tidal waters unsuitable for designated uses.
- 4.5.7 Bacterial Water Quality Criteria
- 4.5.7.1 Primary and Secondary Contact Recreation Waters:

PROPOSED REGULATIONS

The following criteria shall apply:

Waterbody Type	Single-Sample Value (Enterococcus Colonies/100ml)	Geometric Mean (Enterococcus Colonies/100ml)
Primary Contact Recreation Fresh Waters	185	100
Primary Contact Recreation Marine Waters	104	35
Secondary Contact Recreation Fresh Waters	925	500
Secondary Contact Recreation Marine Waters	520	175

The purpose of these criteria is to provide the Department with a basis to assess water quality trends and pollution control needs with regard to primary and secondary contact recreation in waters of the State and to meet Federal BEACH Act Requirements. The criteria apply to enterococcus bacteria determined by the Department to be of non-wildlife origin based on best scientific judgment using available information. Swimming in waters affected by runoff during runoff periods may present an elevated risk of gastrointestinal illness and is not recommended.

4.5.7.2 Harvestable Shellfish waters:

The total coliform median MPN of the water shall not exceed 70/100 mL, nor shall more than 10% of the samples have an MPN in excess of 330/100 mL for a 3 decimal dilution test (or 230/100 mL where the 5 tube decimal test is used). These criteria shall be verified through sampling of those portions of the shellfish area most probably exposed to fecal contamination for those tidal and climatic conditions most likely to result in contamination of the shellfish area.

4.5.8 Nutrients

Nutrient overenrichment is recognized as a significant problem in some surface waters of the State.

4.5.8.1 It shall be the policy of this Department to minimize nutrient input to surface waters from point and human induced non-point sources.

4.5.8.2 The types of, and need for, nutrient controls shall be established on a site-specific basis. Nutrient controls may include, but shall not be limited to, discharge limitations or institution of best management practices.

4.5.8.3 For lakes and ponds, controls shall be designed to eliminate overenrichment.

4.5.8.4 For tidal portions of the stream basins of Indian River, Rehoboth Bay, and Little Assawoman Bay, controls needed to attain submerged aquatic vegetation growth season (approximately March 1 to October 31) average levels for dissolved inorganic nitrogen of 0.14 mg/L as N, for dissolved inorganic phosphorus of 0.01 mg/L as P, and for total suspended solids of 20 mg/L shall be instituted.

4.5.8.5 ~~The specific measures to be employed by existing NPDES facilities to meet the aforementioned criteria shall be as specified in Section 5.6.3.4 of these standards. For the tidal Murderkill River, from the Route 1 Bridge to the confluence with Delaware Bay, annual average total nitrogen shall not exceed 2.0 mg/L and annual average total phosphorous shall not exceed 0.20 mg/L.~~

4.5.8.6 The specific measures to be employed by existing NPDES facilities to meet the aforementioned criteria shall be as specified in Section 5.6.3.4 of these standards.

(Break in Continuity Within Section)

TABLE 1
WATER QUALITY CRITERIA FOR PROTECTION OF AQUATIC LIFE

(All Values Are Listed or Calculated in Micrograms Per Liter)

PROPOSED REGULATIONS

699

Parameter	Fresh Acute Criterion	Fresh Chronic Criterion	Marine Acute Criterion	Marine Chronic Criterion
Aldrin	3.0	--	1.3	--
<u>Acrolein</u>	<u>3.0</u>	<u>3.0</u>		
Aluminum pH6.5-9.0	750.	87.	--	--
Ammonia	Temperature and pH dependent, see formula after this table	Temperature and pH dependent, see formula after this table		
Arsenic (III)*	340.	150	69.	36.
Cadmium*	(1.136672-LN(hardness)*0.041838)* EXP(1.0166*LN(hardness)-3.924)	(1.101672-LN(hardness)*0.041838)* EXP(0.7409*LN(hardness)-4.719)	40.	8.8
<u>Carbaryl</u>	<u>2.1</u>	<u>2.1</u>	<u>1.6</u>	
Chlordane	2.4	0.0043	0.09	0.004
Chlorine	19	11.	13	7.5
Chlorpyrifos (Dursban)	0.083	0.041	0.011	0.0056
Chromium (III)*	0.316*EXP(0.819*LN(hardness)+3.7256)	0.86*EXP(0.819*LN(hardness)+0.6848)	C	--
Chromium (VI)*	16.	11.	1,100.	50.
Copper*	0.96*EXP(0.9422*LN(hardness)-1.7)	0.96*EXP(0.8545*LN(hardness)-1.702)	4.8	3.1
Cyanide ¹	22.	5.2	1.0	--
DDT and Metabolites (DDD and DDE)	1.1	0.0010	0.13	0.0010
Demeton	--	0.10	--	0.10
<u>Diazanone</u>	<u>0.17</u>	<u>0.17</u>	<u>0.82</u>	<u>0.82</u>
Dieldrin	0.24	.056	0.71	0.0019
Endosulfan	0.22	0.056	0.034	0.0087
Endrin	.086	.036	0.037	0.0023
Guthion	--	0.01	--	0.01
Heptachlor	0.52	0.0038	0.053	0.0036
Hexachloro-cyclohexane	.095	0.08	0.16	--
Iron	--	1000.	--	--
Lead*	(1.46203-LN(hardness)*0.145712)* EXP(1.273*LN(hardness)-1.460)	(1.46203-LN(hardness)*0.145712)* EXP(1.273*LN(hardness)-4.705)	210.	8.1
Malathion	--	0.1	--	0.1
Mercury (II)*	1.4	.77	1.8	0.94
Methoxychlor	--	0.03	--	0.03
Mirex	--	0.001	C	0.001
Nickel*	0.998*EXP(0.8460*LN(hardness)+2.255)	0.997*EXP(0.8460*LN(hardness)+0.0584)	74.	8.2
Total PCBs		0.014		0.03
Parathion	0.065	0.013	--	--
Pentachlorophenol	EXP(1.005*pH-4.869)	EXP(1.005*pH-5.134)	13.	7.9
Selenium	20	5.0	290	71.
Silver*	0.85*EXP(1.72*LN(hardness)-6.59)	--	1.9	--
Toxaphene	0.73	0.0002	0.21	0.0002
<u>Tributyltin (TBT)</u>	<u>0.46</u>	<u>0.072</u>	<u>0.42</u>	<u>0.0074</u>
Zinc*	0.978*EXP(0.8473*LN(hardness)+0.884)	0.986*EXP(0.8473*LN(hardness)+0.884)	90	81

Notes:

¹ Cyanide measured as free cyanide at the lowest pH occurring in the receiving water, or cyanide amenable to chlorination.

Formulas in the table have been formatted so that they can be copied directly into spreadsheets to calculate criteria. Criteria are calculated to two significant figures.

LN = natural log base e

EXP = e = 2.71828

Hardness is expressed as mg/L as CaCO₃

pH is expressed as Standard Units

* Criteria is for total dissolved form

Calculation of Freshwater Acute Ammonia Criterion:

Where salmonid fish are present:

$$\text{Criterion} = \frac{0.275}{1 + 10^{7.204 - \text{pH}}} + \frac{39.0}{1 + 10^{\text{pH} - 7.204}}$$

Or where salmonid fish are not present:

$$\text{Criterion} = \frac{0.411}{1 + 10^{7.204 - \text{pH}}} + \frac{58.4}{1 + 10^{\text{pH} - 7.204}}$$

Calculation of Freshwater Chronic Ammonia Criterion:

The thirty-day average concentration of total ammonia nitrogen (in mg N/L) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

When fish early life stages are present:

$$\text{Criterion} = \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} * \text{MIN} (2.85, 1.45 * 10^{0.028 * (25 - T)})$$

When fish early life stages are absent:

$$\text{Criterion} = \frac{0.0577}{1 + 10^{7.688 - \text{pH}}} + \frac{2.487}{1 + 10^{\text{pH} - 7.688}} * [1.45 * 10^{0.028 * (25 - \text{MAX}(T, 7))}]$$

Additional Freshwater Chronic Ammonia Criterion:

The highest four-day average within the 30-day period shall not exceed 2.5 times the chronic criterion.

TABLE 2
WATER QUALITY CRITERIA FOR PROTECTION OF HUMAN HEALTH
 (All Values Are Listed in Micrograms per Liter)

Chemical	Systemic Toxicants		Human Carcinogens	
	Fish Ingestion	Fish and Water Ingestion	Fish Ingestion	Fish and Water Ingestion

PROPOSED REGULATIONS

Acenaphthene	990	670		
Acrolein	9.3	6.1		
Acrylonitrile			0.25	0.051
Aldrin	0.025	0.025	0.00005	0.000049
Anthracene	40000	8300		
Antimony	1600	6 (MCL)		
Arsenic (inorganic)		10 (MCL)		
Asbestos		7 million fibers/L (MCL)		
barium		2000 (MCL)		
Benzene	3100	5 (MCL)	14	0.61
Benzidine	140	59	0.00019	0.000086
Benzo(a)Anthracene			0.18	0.038
Benzo(a)Pyrene		0.2 (MCL)	0.018	0.0038
Benzo(b)Fluoranthene			0.18	0.038
Beryllium	420	4 (MCL)	0.024	0.0034
Bis(2-Chloroethyl)Ether			0.53	0.03
Bis(2-Chloroisopropyl)Ether	65000	1400		
Bis(2-Ethylhexyl)Phthalate	620	6 (MCL)	2.2	1.2
Bromoform	9600	650	61	4.1
Butylbenzyl Phthalate	1900	1500		
Cadmium	31	5 (MCL)		
Carbon Tetrachloride	450 <u>850</u>	5 (MCL)	4.6 <u>3.0</u>	0.23 <u>0.43</u>
Chlordane	0.14	0.14	0.00081	0.0008
Chlorobenzene	7800	100 (MCL)		
Chlorodibromomethane	21000	680	13	0.4
Chloroform	11000	340		
2-Chloronaphthalene	1600	1000		
2-Chlorophenol	150	81		
Chromium (III)	380000	100 (MCL)		
Chromium (VI)	750	92		
Chromium		100 (MCL)		
Chrysene			0.18	0.038
Copper		1300 (MCL)		
Cyanide	80000 <u>2400</u>	200 <u>21</u>		
DDT and Metabolites (DDD and DDE)	0.037	0.037	0.00022	0.00022
Dibenzo(a,h)Anthracene			0.018	0.0038
1,2-Dichlorobenzene	6500	600 (MCL)		
1,3-Dichlorobenzene	1300	350		
1,4-Dichlorobenzene	1400	75 (MCL)		
3,3'-Dichlorobenzidine			0.028	0.021
Dichlorobromomethane		680	17	0.55
1,2-Dichloroethane		5 (MCL)	37	0.38
1,1-Dichloroethylene	36000	7 (MCL)	1.2	0.056
Dichloromethane	260000 <u>27000</u>	5 (MCL)	590 <u>2200</u>	4.6 <u>17</u>
2,4-Dichlorophenol	290	77		
2,4 Dichlorophenoxyacetic acid (2,4-D)		70 (MCL)		
1,2 Dichloropropane			15	0.5
1,3-Dichloropropene	63000	1000	42	0.69
Dieldrin	0.043	0.041	0.000054	0.000052

PROPOSED REGULATIONS

Diethyl Phthalate	44000	17000		
Dimethyl Phthalate	1100000	270000		
2,4-Dimethylphenol	850	380		
Di-n-Butyl Phthalate	4500	2000		
2,4-Dinitrophenol	5300	69		
2,4-Dinitrotoluene	2100	68	3, 4	0.11
2,3,7,8-TCDD (Dioxin) (as TEQ ¹)	<u>0.0000006</u>	0.000003 (MCL) <u>0.0000005</u>	5.1E-09	5.0 E-09
1,2-Diphenylhydrazine			0.2	0.036
Endosulfan	89	62		
Endrin	0.3	0.29		
Endrin Aldehyde	0.3	0.29		
Ethylbenzene	11000	700 (MCL)		
Fluoranthene	140	130		
Fluorene	5300	1108		
Fluoride		4000 (MCL)		
Heptachlor	0.18	0.18	0.000079	0.000079
Heptachlor Epoxide	0.0046	0.0046	0.000039	0.000039
Hexachlorobenzene	0.36	0.35	0.00028	0.00028
Hexachlorobutadiene	2900	68	18	0.44
Hexachlorocyclohexane			0.017	0.0091
Hexachlorocyclopentadiene	5500	50 (MCL)		
Hexachloroethane	46 <u>32</u>	20 <u>14</u>	3-3 <u>1.1</u>	4-4 <u>0.5</u>
Ideno(1,2,3-cd)pyrene			0.18	0.038
Isophorone	180000	6700	960	35
Lead		15 (MCL)		
alpha-BHC		0.2 (MCL)	0.0048	0.0026
beta-BHC		0.2 (MCL)	0.017	0.0091
gamma-BHC (Lindane)	9.2	0.2 (MCL)	0.23	0.12
Methyl Mercury	0.3mg/kg fish tissue	0.3mg/kg fish tissue		
Methoxychlor		40 (MCL)		
Methyl Bromide	1500	47		
3-Methyl-4-Chlorophenol				
Nickel (soluble salts)	1700	100 (MCL)		
Nitrate		10000 (MCL)		
Nitrobenzene	690 <u>2800</u>	47 <u>68</u>		
N-Nitrosodimethylamine			3	0.00069
N-Nitrosodi-n-Propylamine			0.51	0.005
N-Nitrosodiphenylamine			6	3.3
Pentachlorophenol	41000 <u>1800</u>	1 (MCL)	3 <u>0.9</u>	0.27 <u>0.08</u>
Phenol	860000	10000		
Polychlorinated Biphenyls PCBs:		0.5 (MCL)	0.000064	0.000064
Pyrene	4000	830		
Selenium	4200	50 (MCL)		
Silver	40000	170		
1,1,2,2-Tetrachloroethane	<u>16000</u>	<u>670</u>	4	0.17
Tetrachloroethylene	4300 <u>780</u>	5 (MCL)	3-3 <u>62</u>	0-69 <u>13</u>
Thallium	18	2 (MCL)		
Toluene	30000	1000 (MCL)		

Total Trihalomethanes (TTHM)		80 (MCL)		80
Toxaphene		3 (MCL)	0.00028	0.00028
1,2-Trans-Dichloroethylene	51000	100 (MCL)		
1,2,4-Trichlorobenzene	350	70 (MCL)		
1,1,1-Trichloroethane	1400000	200 (MCL)		
1,1,2-Trichloroethane	3600	5 (MCL)	16	0.59
Trichloroethylene	<u>190</u>	5 (MCL)	30 <u>8.2</u>	2.5 <u>0.7</u>
2,4,6-Trichlorophenol			2.4	1.4
2,4,5 Trichlorophenoxypropionic acid (2,4,5-TP- Silvex)		50 (MCL)		
Vinyl Chloride	10000	2 (MCL)	2.4	0.025
Zinc	26000	7400		

The columns labeled "Fish and Water Ingestion" shall apply only to waters of the State designated Public Water Supply sources in these standards.

The column labeled "Fish Ingestion Only" shall apply to all-waters of the State not designated Public Water Supply sources in this document.

**Values shown with "(MCL)" under header "Fish and Water Ingestion" are Primary Maximum Contaminant Levels (MCLs) as given in the State of Delaware Regulations Governing Public Drinking Water Systems that became effective September 10, 2001

[¹ Criteria is for the "total toxic equivalence (TEQ) to 2,3,7,8-TCDD". The toxic equivalence for a sample is the sum of the concentration for each congener multiplied by its associated Toxicity Equivalence Factor (TEF) listed in table below.

$$TEQ = ((\text{Concentration of Congener in sample}) \times (\text{TEF}))$$

where the TEF is unitless and the concentration is in ug/l.

(Break in Continuity Within Section)

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the entire regulation is available at:**

7401 Surface Water Quality Standards

DIVISION OF WATERSHED STEWARDSHIP

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 7408

7408 TMDLs for the Murderkill River Watershed

REGISTER NOTICE

Brief Synopsis of the Subject, Substance, and Issues

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct a Public Hearing regarding proposed amendments to the Total Maximum Daily Loads (TMDLs) Regulation for nutrients and oxygen consuming materials for the Murderkill River Watershed, which was promulgated in June of 2005. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

Since promulgation of the 2005 Murderkill River TMDLs, a multi-year monitoring, research, and modeling study of Murderkill River Watershed by DNREC and other cooperating agencies and institutions resulted in proposing

scientifically-based, site-specific dissolved oxygen and nutrient criteria for the tidal Murderkill River. This proposed amendment of the WLA component of the 2005 TMDLs is to comply with these new site-specific dissolved oxygen and nutrient criteria for the tidal Murderkill River.

Possible Terms of the Agency Action

This proposed action will amend the Waste Load Allocation component of the 2005 Murderkill River TMDLs Regulation. DNREC will work with Kent County Government to implement the requirements of the amended Waste Load Allocation.

Statutory Basis or Legal Authority to Act

The authority to develop a TMDL is provided by Title 7 of the **Delaware Code**, Chapter 60, and Section 303(d) of the Federal Clean Water Act, 33 U.S.C. 1251 et. seq., as amended.

Other Legislation That May be Impacted

None

Notice of Public Hearings and Comment Period

The Public Hearing on proposed amendments to the 2005 Murderkill River Watershed TMDLs Regulation will be held at 5:00 p.m., Wednesday, January 22, 2014, in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

Please send written comments to Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us). All written comments must be received by February 4, 2014. Electronic submission is preferred.

Copies of the Proposed amendments to the 2005 Murderkill River Watershed TMDL Regulation and technical support documents will be available as of Wednesday, January 1, 2014 on the Department's website at <http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx> or by contacting Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140. Electronic comments are preferred; please e-mail comments to Hassan.Mirsajadi@state.de.us.

Prepared By:

John Schneider, Watershed Assessment and Management Section, (302) 739-9939.

7408 TMDLs for the Murderkill River Watershed**1.0 Introduction and Background**

- 1.1 Intensive water quality monitoring performed by Delaware Department of Natural Resources and Environmental Control (DNREC) has shown that the waters of the Murderkill River and several of its tributaries and ponds are impaired as the result of low dissolved oxygen and high nutrients. Low concentrations of dissolved oxygen are harmful to fish, shellfish, and other aquatic life. With regard to nutrients (nitrogen and phosphorus), although they are essential elements for both plants and animals, their presence in excessive amounts causes undesirable conditions. Symptoms of nutrient overenrichment include frequent phytoplankton blooms, decreased water clarity, dissolved oxygen deficiency, alteration of composition and diversity of economically important native species of plants and animals, and possible human health effects.
- 1.2 A reduction in the amount of nutrients and oxygen consuming pollutants reaching the waters of the Murderkill River and its tributaries and ponds is necessary to reverse these undesirable impacts.

These pollutants and nutrients enter the waters of the Murderkill River from point sources and nonpoint sources. Point sources are end-of-pipe discharges from municipal or industrial wastewater treatment plants. Nonpoint sources include runoff from agricultural and urban areas, septic tank effluent, and ground water discharges.

- 1.3 Section 303(d) of the Federal Clean Water Act (CWA) requires states to develop a list (303(d) List) of waterbodies for which existing pollution control activities are not sufficient to attain applicable water quality criteria and to develop Total Maximum Daily Loads (TMDLs) for pollutants of concern. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still protect water quality. TMDLs are composed of three components, including Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties and future growth.
- 1.4 DNREC listed the Murderkill River and several of its tributaries and ponds on the Delaware's 1996, 1998, and 2000 303(d) Lists and ~~proposes the following~~ developed and promulgated Total Maximum Daily Load regulation for nitrogen, phosphorous, and Carbonaceous Biochemical Oxygen Demand (CBOD) in 2005.
- 1.5 Since the promulgation of the 2005 TMDLs, a multi-year monitoring, research, and modeling study of Murderkill River Watershed by DNREC and other cooperating agencies and institutions concluded that new scientifically-based, site-specific dissolved oxygen and nutrient criteria should be adopted for the tidal Murderkill River. This amendment of the WLA component of the 2005 TMDLs is to comply with these new site-specific dissolved oxygen and nutrient criteria for the tidal Murderkill River

2.0 Total Maximum Daily Loads (TMDLs) Regulation for the Murderkill River Watershed, Delaware

~~**Article 1.** The total nitrogen waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 755.3 pounds per day. The waste load allocation for the Kent County Facility will be 751 pounds per day and for Canterbury Crossing Mobile Home Park will be 4.3 pounds per day.~~

~~**Article 2.** The total phosphorus waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 62.7 pounds per day. The waste load allocation for the Kent County Facility will be 62.5 pounds per day and for Canterbury Crossing Mobile Home Park will be 0.2 pounds per day.~~

~~**Article 3.** The CBOD5 (5 day Carbonaceous Biochemical Oxygen Demand) waste load from the Kent County Facility and Canterbury Crossing Mobile Home Park shall be limited to 1010.6 pounds per day. The waste load allocation for Kent County Facility will be 1001 pounds per day and for Canterbury Crossing Mobile Home Park will be 9.6 pounds per day.~~

~~**Article 4.** Treated wastewater from the City of Harrington wastewater treatment facility shall be used for spray irrigation. However, during the winter season, as well as during wet weather periods, when spray irrigation of treated wastewater is not practical, the effluent may be discharged into Browns Branch. During periods of surface discharge, the maximum discharge flow rate shall not exceed 750,000 gallons per day and daily waste loads shall not exceed 140 pounds per day for total nitrogen, 0.75 pounds per day for total phosphorus, and 37.5 pounds per day for CBOD5. Furthermore, the total annual waste load discharged from the City of Harrington wastewater treatment facility to the surface waters of Browns Branch shall not exceed 9125 pounds per year for total nitrogen, 55 pounds per year for total phosphorus, and 3000 pounds per year for CBOD5.~~

Article 1. The Kent County Facility shall be the only point source discharge in the Murderkill River Watershed.

Article 2. The total nitrogen waste load from the Kent County Facility shall be limited to 897 pounds per day to be expressed as an annual average.

Article 3. The total phosphorus waste load from the Kent County Facility shall be limited to 51 pounds per day to be expressed as an annual average.

Article 4. The CBOD5 (5-day Carbonaceous Biochemical Oxygen Demand) waste load from the Kent County Facility shall be limited to 544 pounds per day.

PROPOSED REGULATIONS

Article 5. The nonpoint source nitrogen load in the entire watershed shall be reduced by 30 percent (from the 1997 base-line). This shall result in a yearly-average total nitrogen load of 560 pounds per day.

Article 6. The nonpoint source phosphorus load in the entire watershed shall be reduced by 50 percent (from the 1997 base-line). This shall result in a yearly-average total phosphorous load of 96 pounds per day.

Article 7. Based upon hydrodynamic and water quality model runs and assuming implementation of reductions identified by Articles 1 through 6, DNREC has determined that, with an adequate margin of safety, water quality standards and nutrient targets will be met in the Murderkill River and its tributaries and ponds.

~~**Article 8.** Implementation of this TMDL Regulation shall be achieved through development and implementation of a Pollution Control Strategy. The Strategy will be developed by DNREC in concert with the Murderkill River Tributary Action Team, other stakeholders, and the public.~~

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES

OFFICE OF CHILD CARE LICENSING

Statutory Authority: 31 Delaware Code, Chapter 3 (31 Del.C. Ch. 3)
9 DE Admin. Code 105

PUBLIC NOTICE

105 Residential Child Care Facilities and Day Treatment Programs

Summary

The Office of Child Care Licensing proposes to amend the Delacare Requirements for Residential Child Care Facilities and Day Treatment Programs in response to public comments received after the publication of revised regulations in the June, 2013 and August, 2013 *Register of Regulations*.

Comments

A copy of the proposed regulations is being published in the January, 2014 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on January 31, 2014.

Adoption of Proposed Regulations

The action concerning the determination of whether to adopt the proposed regulations will be based upon staff analysis and the consideration of the comments and written materials filed by other interested persons.

Summary of Public Comments Not Incorporated Into This Draft

1. The Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities both question the rationale for the general ban on toys in a crib with a sleeping infant.

11.11.2.8 Cribs and playpens are free of hazards and toys when an infant is sleeping;

This prohibition is consistent with the recommendations of the American Academy of Pediatrics as found in Caring for Our Children, National Health and Safety Performance Standards, Guidelines for Early Care and Education, Third Edition which states that “Soft object/toys can cause suffocation....If an infant is not content in a crib, the infant should be removed....Childcare settings are held at a higher standard, warranting the removal of these potential hazards.” (p.285)

2. The Governor’s Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities both question the change in definition of child and state “it could prove troublesome for individuals who receive extended DFS series through age 21....” A youth shall attain the age of majority at age 18 but extended jurisdiction may continue until the youth attains 21 years of age.

(Rule 1.10) “Child” means any of the following: a person who has not reached 18 years of age.

~~A person in a facility or program who becomes 18 years of age while residing in the facility or participating in the program, and who has not attained the age of 25.~~

Summary of Proposed Changes to the Draft Previously Published

1. Definition of Terms are not numbered.
2. References to a specific rule number in parentheses (example: Rule 1.10) are deleted.
3. 3.5.1.2.2 ~~Verified every three years thereafter as being free from tuberculosis.~~ Further tuberculin testing shall occur if there are specific concerns about the health of the employee/volunteer or in accordance with current guidelines of the Delaware Division of Public Health.
4. 3.5.7.1 (Rule 3.169) ~~A licensee shall use a disinfectant solution for disinfecting areas that have been contaminated by body fluids. The disinfectant solution shall be a commercially prepared spill kit or self made consisting of one fourth cup of household bleach to each gallon of water, which shall be prepared daily, labeled, and placed in a bottle or a plastic container that is sealed with a cap and stored out of reach of children. Because of the variety of strengths of products available, providing a generic bleach recipe for sanitizing and disinfecting is no longer possible. If using an EPA-registered bleach product, the manufacturer’s instructions for diluting the product for sanitizing or disinfecting, as well as the contact time, shall be followed. If not using an EPA-registered bleach product for sanitizing and disinfecting, the guidelines provided by an agency approved by the Office of Child Care Licensing, such as the Delaware Department of Public Health, shall be followed. These products and their instructions for use shall be available for review.~~

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

105 Residential Child Care Facilities and Day Treatment Programs

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 105(a)(1) (24 Del.C. §105(a)(1))
24 DE Admin. Code 100

PUBLIC NOTICE

100 Board of Accountancy

PROPOSED REGULATIONS

The Delaware Board of Accountancy, pursuant to 24 **Del.C.** §105(a)(1), proposes to revise its rules and regulations. The Board will hold a public hearing on the proposed rule change on February 19, 2014 at 9:30 AM, Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator for the Delaware Board of Accountancy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until March 6, 2014.

100 Board of Accountancy

(Break in Continuity of Sections)

4.0 Requirements for a Certificate and Permit to Practice Certified Public Accountancy

- 4.1 Each applicant for a certificate and permit to practice certified public accountancy must provide the Board with the following:
- 4.1.1 A statement under oath or other verification satisfactory to the Board that the applicant is of good character as that term is defined in 24 **Del.C.** §107(a)(1).
 - 4.1.2 Evidence in a form satisfactory to the Board that the applicant has successfully passed the Uniform Certified Public Accountant Examination or its successor examination as established by the AICPA and the National Association of State Boards of Accountancy (NASBA).
 - 4.1.3 Evidence in a form satisfactory to the Board that the applicant has successfully completed the AICPA self-study program "Professional Ethics for CPAs," or its successor course, with a grade of not less than 90%.
 - 4.1.4 Evidence in a form satisfactory to the Board that the applicant has completed at least 150 semester hours of college education including a Baccalaureate Degree or a higher degree or met the educational requirements of a state that was deemed to be substantially equivalent as of January 1, 2009 and in which the applicant was a CPA examination candidate and passed said exam. The total educational program shall include a concentration in accounting.

(Break in Continuity Within Section)

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the entire regulation is available at:**

100 Board of Accountancy

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 1904(c) (24 **Del.C.** §1904(c))
24 **DE Admin. Code** 1900

PUBLIC NOTICE

1900 Board of Nursing

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulation 2.4.1.7.4, 7.2.3, and 8.0 et seq. The proposed change at rule 2.4.1.7.4 clarifies that LPN practice does not equate to RN practice for purposes of nursing educational programs, and the proposed change at 7.2.3 clarifies that the practice of nursing occurs at the location of the patient regardless of the location of the nurse. The proposed changes to 8.0 et seq. create four types of APN licenses with specific population foci, update the national certification bodies recognized by the Board, and update the entire regulation regarding advance practice nursing licensure requirements.

The Board will hold a public hearing on the proposed regulation change on February 12 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be

sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 27, 2014 pursuant to 29 **Del.C.** §10118(a).

***Please Note: Due to the size of the proposed regulation, it is not being published here. A copy of the regulation is available at:**

1900 Board of Nursing

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2506(a)(1) (24 **Del.C.** §2506(a)(1))
24 **DE Admin. Code** 2500

PUBLIC NOTICE

2500 Board of Pharmacy

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations. The rules pertaining to patient counseling are amended to provide that the pharmacist, or registered intern or pharmacy student, shall provide counseling to a new patient, an existing patient with a new prescription, or a patient with a prescription that has been modified. Rule 12.0, addressing health care facilities, has been revised to ensure appropriate oversight by a pharmacist where the pharmacist is providing contractual pharmaceutical services in a health care facility setting. Finally, Rule 17.0, listing the crimes substantially related to the practice of pharmacy, has been expanded to encompass certain sexual offenses and crimes against children.

A public hearing will be held on February 19, 2014 at 10:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be March 6, 2014 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on March 19, 2014 at 10:00 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

2500 Board of Pharmacy

1.0 Pharmacist Licensure Requirements

1.1 Definitions

(Break in Continuity Within Section)

"Patient Counseling" means ~~the offer to discuss the patient's prescription made by the pharmacist or the pharmacist's designee in a face to face communication with the patient or his agent, unless in the professional judgment of the pharmacist it is deemed impracticable and in such instances, it would be permissible for the offer to counsel to be made through alternative means.~~ an oral communication process between a pharmacist, or a registered intern or a pharmacy student working under the direct supervision of a pharmacist, and a patient, in which the pharmacist obtains information from the patient and the patient's pharmacy records, assesses that information and provides the patient with professional advice regarding the safe and effective use of the prescription drug for the purpose of assuring therapeutic appropriateness.

PROPOSED REGULATIONS

(Break in Continuity of Sections)

5.0 Dispensing

(Break in Continuity Within Section)

5.2 Patient Counseling

5.2.1 ~~A pharmacist, or a pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist shall, with each new medication dispensed, provide verbal counseling to the patient or the patient's agent on pertinent medication information. The counseling may include, but not be limited to the following: Prior to dispensing a prescriptive medication to a new patient, a new medication to an existing patient or a medication that has had a change in the dose, strength, route of administration or directions for use, a pharmacist, or a registered intern or pharmacy student working under the direct supervision of a pharmacist, shall provide verbal counseling to the patient on pertinent medication information. The counseling may include, but not be limited to the following:~~

- 5.2.1.1 the name and description of the prescribed drug;
- 5.2.1.2 the dosage and the dosage form;
- 5.2.1.3 the method and route of administration;
- 5.2.1.4 the duration of the prescribed drug therapy;
- 5.2.1.5 any special directions and precautions for preparation, administration, and use by the patient that the pharmacist determines are necessary;
- 5.2.1.6 common severe side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, how to avoid them, and what actions should be taken if they occur;
- 5.2.1.7 patient techniques for self-monitoring of the drug therapy;
- 5.2.1.8 proper storage and appropriate disposal methods for unwanted or unused medications;
- 5.2.1.9 prescription refill information;
- 5.2.1.10 the action to be taken in the event of a missed dose; and
- 5.2.1.11 current over-the-counter medication use.

5.2.2 This section does not apply to a pharmacist dispensing drugs for inpatient use in a hospital or other institution where the drug is to be administered by a nurse or other appropriate health care provider.

5.2.3 Nothing in this section requires a pharmacist or pharmacy intern or student participating in an approved College of Pharmacy coordinated practical experience program and working under the direct supervision of a pharmacist, to provide patient counseling when a patient ~~or the patient's agent~~ refuses the counseling. There must be a record in a uniform place that documents a patient's acceptance or refusal of counseling.

5.2.4 If the dispensed prescription is delivered by an agent of the pharmacy when the pharmacist is not present (i.e. home delivery, pharmacist off duty and non-resident pharmacies), or if an agent is picking up the prescription for the patient, written or printed information shall be included with the prescription. The patient or his/her agent shall be provided with the pharmacist's contact information and informed that the pharmacist will be available for consultation.

Effective Date: October 11, 1996

Effective Date: April 14, 1997 Section 5.4 revised

Effective Date: June 11, 1998

Amended Effective September 11, 1999

(Break in Continuity of Sections)

42.0 ~~Health Care Facilities~~

12.1 Definition

A health care facility means any organization, other than a nursing home or hospital, which is licensed or certified by the State to provide a physical environment for patients in which health care services are a primary component. These facilities include, but are not limited to:

- 12.1.1 Convalescent homes
- 12.1.2 Extended health facilities
- 12.1.3 Mental health facilities
- 12.1.4 Rehabilitation centers
- 12.1.5 Psychiatric centers
- 12.1.6 Group homes for mentally retarded
- 12.1.7 Group homes for mentally ill
- 12.1.8 Clinics
- 12.1.9 Residential treatment centers
- 12.1.10 End Stage Renal Disease Treatment Centers

12.2 Requirements. Any health care facility in which medication is administered and/or dispensed must comply with all State and Federal laws regarding drug storage, labeling, recordkeeping, and security. Only health care personnel authorized by law to handle medication may have access to medication areas.

12.0 Pharmaceutical Services in Health Care Facilities/Programs

12.1 Definition of Health Care Facilities/Programs:

A health care facility/program means any organization, other than a nursing home or hospital, which is licensed or certified by the State to provide a physical environment for patients in which health care services are a component. These facilities/programs include, but are not limited to:

- 12.1.1 Assisted Living Facilities (Title 16 **Administrative Code** 3225)
- 12.1.2 Group Homes (AIDS)
- 12.1.3 Group Homes (Mental Health)
- 12.1.4 Neighborhood Homes (DD)
- 12.1.5 Rest Residential
- 12.1.6 Intensive Behavioral Support and Educational Residence
- 12.1.7 Clinics
- 12.1.8 Residential Child Care Facilities and Day Treatment Programs
- 12.1.9 End Stage Renal Disease Treatment Centers

12.2 Requirements. Any health care facility/program in which pharmaceutical services are provided must comply with all State and Federal laws regarding drug storage, labeling, recordkeeping, and security. Only health care personnel authorized by law to handle medication may have access to medication areas.

12.2.1 Any pharmacist providing contractual pharmaceutical services to the Health Care Facilities/Programs will be responsible for providing information to the staff as may be appropriate or required to ensure safety, understanding and compliance with policies and procedures pertaining to pharmacy-related activities and concerns. The written policies and procedures which shall be provided include, but are not limited to:

- 12.2.1.1 Policies and procedures that pertain to the pharmacy services provided for the contracted health care facility/program.
- 12.2.1.2 Policies governing appropriate security and storage of medications.
- 12.2.1.3 Policies and procedures necessary to insure the safe use, administration, control and accountability of all drugs throughout the Health Care Facility/Program in compliance with State and Federal laws.
- 12.2.1.4 Policies and procedures outlining the destruction of wastage for all medications.

PROPOSED REGULATIONS

12.2.1.5 Procedures to follow if a pharmacy dispensing error has occurred.

12.2.2 The pharmacist shall make inspections of each Health Care Facility/ Program and related drug storage areas at least annually. The inspections may be more frequent if required by other state laws or depending on the contractual agreement with health care facilities/programs. At the discretion of the pharmacist a pharmacy support person may assist with the inspection under the direct supervision of a pharmacist.

12.2.2.1 Inspections must include, but are not limited to, documentation of the following:

12.2.2.1.1 Medication storage area(s) (59 to 86 degrees Fahrenheit) and refrigerator temperatures (36 to 46 degrees Fahrenheit);

12.2.2.1.2 Security of all drugs/devices meeting all the requirements of State and Federal laws and regulations;

12.2.2.1.3 Proper labeling, including any accessory or cautionary instructions;

12.2.2.1.4 Proper expiration dating;

12.2.2.1.5 Cleanliness;

12.2.2.2 Copies of these inspection reports must be maintained at the facility and the pharmacy provider for two years.

(Break in Continuity of Sections)

17.0 Crimes substantially related to the practice of pharmacy.

17.1 For the purposes of this section the following definitions shall apply:

17.1.1 **“Conviction”** means a verdict of guilty entered by a judge or jury, or a plea of guilty or a plea of *nolo contendere* or other similar plea such as a **“Robinson”** or **“Alford”** plea unless the individual has been discharged under 11 **Del.C.** §4218 (probation before judgment) or under 10 **Del.C.** §1024 (domestic violence diversion program) or under 16 **Del.C.** §4764 (first offenders controlled substances diversion program).

17.2 Conviction of any of the following crimes, or of the attempt to commit or of a conspiracy to commit or conceal the following crimes, is deemed to be a crime substantially related to the practice of pharmacy in the State of Delaware without regard to the place of conviction:

(Break in Continuity Within Section)

17.2.29 Rape in the first degree; class A felony. 11 **Del.C.** §~~7773~~773

17.2.30 Sexual extortion; class E felony. 11 **Del.C.** §~~7767~~774

17.2.31 Bestiality. 11 **Del.C.** §~~7777~~775

17.2.32 Continuous sexual abuse of a child; class B felony. 11 **Del.C.** §~~7787~~776

17.2.33 Dangerous crime against a child, definitions, sentences. 11 **Del.C.** §~~7797~~777

17.2.34 Sex offender unlawful sexual conduct against a child. 11 **Del.C.** §~~779A7~~777A

17.2.35 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree. 11 **Del.C.** §778, 778A

17.2.356 Female genital mutilation. 11 **Del.C.** §780

17.2.37 Dealing in children. 11 **Del.C.** §1100

17.2.38 Sexual exploitation of a child. 11 **Del.C.** §1108

17.2.39 Unlawful dealing in child pornography. 11 **Del.C.** §1109

17.2.40 Possession of child pornography. 11 **Del.C.** §1111

17.2.41 Sexual offenders; prohibitions from school zones. 11 **Del.C.** §1112

17.2.42 Sexual solicitation of a child. 11 **Del.C.** §1112A

17.2.3643 Any conviction under Title 18 or Title 21 of the United States Code Annotated including, but not limited to Federal Health Care offenses.

- 17.3 Crimes substantially related to the practice of pharmacy shall be deemed to include any crimes under any federal law, state law, or valid town, city or county ordinance, that are substantially similar to the crimes identified in this rule.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the entire regulation is available at:**

2500 Board of Pharmacy

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 **Del.C.** §2906(a)(1))
24 **DE Admin. Code** 2900

PUBLIC NOTICE

2900 Real Estate Commission

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations.

A public hearing will be held on February 13, 2014 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be February 28, 2014, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on March 13, 2014 at 9:30 a.m., at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed an amendment to Rule 13.0 to add a new Rule 13.2.1.4 to clarify the CE hours required where an individual has been licensed for at least eighteen months but less than twenty-four months.

2900 Real Estate Commission

(Break in Continuity of Sections)

13.0 Continuing Education [24 **Del.C. §§2909(a)(7), 2910(d)]**

- 13.1 Effective as of the license renewal period beginning May 1, 2012, Licensees shall meet the following CE requirements:
- 13.1.1 During each licensure renewal period, Licensees shall complete the following twenty-one (21) hours of CE:
- 13.1.1.1 Three (3) hours in agency and fair housing (Module 1).
 - 13.1.1.2 Three (3) hours in professional standards (Module 2).
 - 13.1.1.3 Three (3) hours in real estate documents (Module 3).
 - 13.1.1.4 Three (3) hours in office management (Module 4).
 - 13.1.1.5 Three (3) hours in legislative issues (Module 5).
 - 13.1.1.6 Three (3) hours in practices of real estate (Module 6).
 - 13.1.1.7 Three (3) hours in elective courses (Module 7).
- 13.1.2 New licensees, other than new Licensees previously licensed in another state, shall complete the following twelve (12) hours of CE during the first twelve months of licensure. These twelve (12)

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hours of CE will be applied to the total amount of required CE hours pursuant to the pro-ration schedule in Rule 13.2:

- 13.1.2.1 Three (3) hours in professional standards.
- 13.1.2.2 Three (3) hours in agreement of sale and buyer representation.
- 13.1.2.3 Three (3) hours in real estate documents and seller representation.
- 13.1.2.4 Three (3) hours in real estate professionalism.

13.1.3 Courses approved for Modules 1 – 6 automatically qualify for credit for Module 7. Students are not required to submit a separate application for Module 7 approval for courses in Modules 1 – 6. This Rule does not apply to out-of-state courses.

13.2 CE hours shall be prorated in accordance with the following schedule:

13.2.1 For new Licensees:

- 13.2.1.1 No continuing education is required for fewer than six months of licensure.
- 13.2.1.2 Six (6) hours of continuing education are required after at least six months but less than twelve months of licensure.
- 13.2.1.3 The twelve (12) hours of continuing education set forth in Rule 13.1.2 are required after at least twelve months but less than ~~twenty-four~~ eighteen months of licensure.
- 13.2.1.4 Eighteen (18) hours of continuing education are required after at least eighteen months but less than twenty-four months of licensure. The required eighteen hours shall include two of the following modules: Modules 1, 5, or 6.
- 13.2.1.45 Twenty-one (21) hours of continuing education are required after twenty-four months of licensure, consisting of: the twelve (12) hours of CE set forth in Rule 13.1.2, three (3) hours in agency and fair housing (Module 1), three (3) hours in legislative issues (Module 5) and three (3) hours in practices of real estate (Module 6).

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the entire regulation is available at:**

2900 Real Estate Commission

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 2906(a)(1) (24 Del.C. §2906(a)(1))
24 DE Admin. Code 2925

PUBLIC NOTICE

2925 Real Estate Commission Education Committee

Pursuant to 24 Del.C. §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to the Real Estate Commission Education Guidelines (the "Guidelines").

A public hearing will be held on February 13, 2014 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 Del.C. §10118(a), the final date to receive written comments will be February 28, 2014, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on March 13, 2014 at 9:15 a.m., at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed revisions to Rule 7.0 to specify that, where a student requests approval for a continuing education course, an instructor resume is not required for a Commission or ARELLO approved

instructor. Rule 7.0 is further amended to state that Modules 1 – 6 automatically qualify for Module 7 credit. Rule 8.4 is revised to state that the course provider shall determine whether electronic devices may be used during the course.

2925 Real Estate Commission Education Committee

(Break in Continuity of Sections)

7.0 Course Approval Process

- 7.1 An application for course approval (on forms approved and provided by the Commission), course outline, all applicable fees and any other documentation that may be required, must be filed by the course sponsor or provider, with the Division of Professional Regulation, Delaware Real Estate Commission, Education Committee, 861 Silver Lake Boulevard, Suite 203, Dover, Delaware 19904-2467, at least sixty (60) days prior to the date that the course is to be held. Failure to file within the appropriate time limit may be cause for rejection. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed may not be considered to have been filed.
- 7.2 An application for an individual student request for approval of an educational course (on forms approved and provided by the Commission), including the course outline, instructor resume of a qualified instructor, and any other documentation that may be required, may be filed by the individual student with the Delaware Real Estate Education Committee within twelve (12) months. An instructor resume is not required where the course will be taught by a Commission or ARELLO approved instructor. Recommendations of the Education Committee shall be made to the Commission within thirty (30) days after the Education Committee receives and reviews the completed application. An application that is incomplete when filed may not be considered to have been filed. The subject educational course must comply with Section 6.0 herein and any other applicable Guidelines. An application that is incomplete when filed, may not be considered to have been filed.
- 7.3 Courses approved for Modules 1 – 6 automatically qualify for credit for Module 7. Students are not required to submit a separate application for Module 7 approval for courses in Modules 1 – 6. This Rule does not apply to out-of-state courses.

8.0 Provider Responsibilities

(Break in Continuity Within Section)

- 8.4 Sponsors or providers of all education courses shall be wholly and completely responsible for the conduct of their attendees, including faithful and complete student attendance as well as facilities management. Faithful and complete attendance is attentive presence for at least fifty (50) minutes of each credit hour. The course sponsor or provider shall determine whether students may use electronic devices during the course. Students shall be advised whether electronic devices are permitted before the course begins. A student who arrives after the instruction has begun or leaves before instruction is complete shall not be given continuing education credit.

***Please Note: As the rest of the sections were not amended they are not being published. A copy of the entire regulation is available at:**

2925 Real Estate Commission Education Committee

OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF FACILITIES MANAGEMENTStatutory Authority: 29 Delaware Code, Section 6908(a)(6) (29 **Del.C.** §6908(a)(6))**PUBLIC NOTICE****Drug Testing Regulation**

In accordance and compliance with the procedures set forth at 29 **Del.C.** §§1131, *et seq.* and 29 **Del.C.** §§10101, *et seq.*, the Director of the Office of Management and Budget is proposing to adopt the following Regulation:

I. Title of Regulation:

Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects (hereafter the "Drug Testing Regulation"). Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the following address:

122 Martin Luther King Jr. Blvd South
Dover, DE 19901.

II. Brief Synopsis of the Subject, Substance, and Issues:

The proposed regulation is intended to safeguard the public by establishing the mechanism, standards and requirements of a Mandatory Drug Testing Program for Contractors and Subcontractors that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 **Del.C.** §6962.

The key components of the Drug Testing Regulation include the following:

- Applicability for all public works projects bid under 29 **Del.C.** §6962.
- A requirement that all Large Public Works RFP's require each Contractor and Subcontractor to have a program of drug testing.
- Conformance to federal (SAMHSA) standards for collection, chain of custody procedures, laboratory testing, and Medical Officer review.
- Requirements for Initial Testing, Random Testing, Reasonable Suspicion Testing, Return to Duty Testing, and Accident Triggered Testing.
- Consequences of a positive test result by an Employee of a Contractor or Subcontractor.
- Penalties for non-compliance with this regulation.

III. Possible Terms of the Agency Action:

There is no sunset date for this Regulation.

IV. Statutory Basis or Legal Authority to Act:

29 **Del.C.** §§ 6903; 6905; 6908 (a)(6); 6961; 6962; 6964.

V. Other Regulations that May Be Affected by the Proposal:

None Known.

VI. Notice of Public Comment:

Any person who wishes to make written suggestions, provide compilations of data, testimony, briefs or other written materials concerning to the proposed Drug Testing Regulation must submit them to:

Robert Scoglietti
Delaware Office of Management and Budget

122 Martin Luther King Jr. Blvd. South
Dover, DE 19901

no later than the close of business on March 7, 2014.

VII. Notice of Public Hearing:

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on February 11, 2014 in Room 219 of the Haslet Armory, 122 Martin Luther King Jr. Blvd South, Dover DE at 2:00 PM. It is requested that those interested in presenting statements at the public hearing register in advance by contacting:

Robert Scoglietti
Delaware Office of Management and Budget
122 Martin Luther King Jr. Blvd. South
Dover, DE 19901

robert.scoglietti@state.de.us

VII. Prepared By:

Robert Scoglietti
Director of Policy and External Affairs
Delaware Office of Management and Budget

Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects

1.0 Purpose

The Office of Management and Budget (“Office”), has developed these regulations that require Contractors and Subcontractors to implement a program of mandatory drug testing for Employees who work on Large Public Works Contracts funded all or in part with public funds pursuant to 29 Del.C. §6908(a)(6). The regulations establish the mechanism, standards and requirements of a Mandatory Drug Testing Program that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 Del.C. §6962.

2.0 Definitions

“Contractor” means an entity such as, but not limited to, an individual, firm, partnership or corporation that has a contractual obligation to perform work for contracts awarded pursuant to 29 Del.C. §6962.

“Drug Testing Firm” is an entity engaged in the business of providing drug testing services for businesses, individuals, governments or any entity that requires drug testing of Employees, applicants, licensees, etc., in compliance with these requirements.

“Employee” means an individual employed by a Contractor or Subcontractor who works on the Jobsite of a Large Public Works Contract but does not fulfill a clerical or administrative function. For the purpose of this definition, clerical or administrative functions shall refer to job responsibilities that do not generally require an employee to work outside of the Contractor’s Jobsite office, home office or other employer-provided office. For the purposes of this regulation, the term “Employee” shall also include supervisors and foremen working on the Jobsite. The term “Employee” shall also include delivery personnel employed by a Contractor or Subcontractor working on or delivering materials and equipment to and from a Jobsite.

“Jobsite” means the site or area directly or indirectly owned, operated or controlled by the Owner in which the Contractor or Subcontractor performs work or delivers services to the Owner. For the

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purpose of this definition, "Jobsite" does not mean a remote work site not under the direct or indirect control of the Owner in which work is performed to fulfill the Contractor's or Subcontractor's obligations.

"Large Public Works Contract" means a contract for a public works construction awarded pursuant to 29 Del.C. §6962.

"Mandatory Drug Testing Program" means a defined set of basic procedures, requirements and rules that must be used by a Contractor or Subcontractor to test Employees for drugs in compliance with these requirements.

"Owner" is the state agency, school district or entity that awards a Large Public Works Contract to a Contractor pursuant to 29 Del.C. §6962.

"Positive Test Result" and "Fail a Drug Test" means the result reported by a Health and Human Services certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentration.

"Random Drug Testing" means that an Employee is chosen at random for testing without advance notice, from a pool of Employees working on the Jobsite. Specific requirements for random drug testing conducted under these regulations are described in Section 5.0.

"Subcontractor" means an entity such as, but not limited to, an individual, firm, partnership or corporation that has a contractual obligation to perform work for, or supply services to a Contractor as defined in section 2.1.

"Testing Certification Forms" means a form supplied by the Owner and completed by the Contractor and Subcontractor certifying their Employees are subject to drug testing procedures in accordance with this regulation.

"Testing Result Forms" means a form summarizing drug testing completed monthly by the Contractor and Subcontractor and submitted to the Owner by the Contractor in accordance with requirements contained in the bid solicitation.

3.0 Employee drug testing plan required in bid and during contract execution.

3.1 The following documentation requirements apply:

3.1.1 At bid submission - A solicitation for a Large Public Works Contract must require each Contractor that submits a bid for the work to submit with the bid a written plan for a program to test the Contractor's and listed Subcontractor's Employees for drugs.

3.1.2 At contract award - A Large Public Works Contract may not be awarded to a Contractor whose bid does not include a written plan for an Employee drug testing program that complies with this regulation for all known Subcontractors.

3.1.3 During contract execution – Contractors that employ additional Subcontractors on the jobsite may do so only after submitting the Subcontractor's plan for an Employee drug testing program.

3.1.4 In the event of an emergency a Contractor may employ additional Subcontractors on the jobsite prior to submitting the Subcontractor's plan for an Employee drug testing program provided that said plan is submitted to the Owner as soon as practicable.

3.2 A Contractor shall be treated as having a Mandatory Drug Testing Program that complies with this regulation if the program includes the following:

3.2.1 The program meets the minimum standards in section 4.0 of this regulation.

3.2.2 The program provides for the frequency of testing of Employees as per section 5.0 of this regulation.

3.2.3 The program imposes disciplinary measures on an Employee who fails a drug test as per section 6.0 of this regulation.

4.0 Minimum Standards for a Mandatory Drug Testing Program

4.1 Testing for the presence of drugs in an Employee's system and the handling of test specimens shall be conducted in accordance with guidelines for the collection, chain-of-custody procedures, laboratory

testing, and Medical Officer Review procedures contained within the Mandatory Guidelines for Federal Workplace Drug Testing Programs published by the Substance Abuse and Mental Health Services Administration (SAMHSA). http://workplace.samhsa.gov/DrugTesting/Level_1_Pages/mandatory_guidelines5_1_10.html

All tests must be processed by a federal Health and Human Services certified laboratory. Contractors must provide documentation detailing the procedures used in the collection, testing and reporting of drug tests sufficient to show conformance with SAMHSA guidelines.

4.2 Contractors and Subcontractors subject to these regulations may procure the services of an appropriate Drug Testing Firm to administer their program. A Contractor or Subcontractor may also implement a Mandatory Drug Testing Program using in-house personnel and resources. However a Contractor or Subcontractor doing so shall have to demonstrate that the program meets or exceeds the requirements specified herein to the satisfaction of the Owner.

4.3 Employees subject to drug testing shall be tested using at a minimum a ten-panel protocol testing plus urine alcohol screening for the following:

- Marijuana
- Cocaine
- Opiates (including Heroin)
- Phencyclidine (PCP)
- Amphetamines (including Methamphetamines)
- Methaqualone
- Benzodiazepines
- Barbiturates
- Methadone
- Propoxyphene
- Urine Alcohol test

4.4 The frequency of Random Drug Testing and the methodology for selecting Employees to be screened are defined in section 5.0 and shall be incorporated into Contractor and Subcontractor mandatory testing procedures. A Contractor or Subcontractor may incorporate rules or requirements that exceed the requirements defined herein.

5.0 Drug Testing Requirements – Frequency for the Testing of Employees

5.1 Initial Drug Testing - Employees commencing work on a Jobsite must be tested with the exception that an Employee who has passed a random or scheduled drug test within the past 60 days from the date of commencing work shall be permitted to work at the Jobsite without further testing; however, the Employee is still subject to random testing.

5.2 Random Drug Testing - During the course of a project, each Contractor and Subcontractor with Employees on the Jobsite shall implement Random Drug Testing according to the following requirements.

5.2.1 All Employees will be subject to random, unannounced testing.

5.2.2 The selection of Employees shall be made by a scientifically valid method of randomly generating an Employee identifier from a Contractor or Sub-contractor's pool of Employees.

5.2.3 No less than 10% of a Contractor's or Subcontractor's Employees shall be randomly selected each month for testing. Contractors or Subcontractors with less than 10 Employees shall test at least one of their Employees, selected randomly per month. Each Employee shall have an equal chance of selection each time the selection is made. Because the selection process is random, some Employees may not be tested within a year, while others may be tested more than once.

5.2.4 Employees notified that they have been selected must report within four hours for testing to a site specified. Employees so notified must have been given such notification at least four hours before the scheduled closing time of the testing facility. Any failure to report for random testing, or to cooperate with the testing procedure shall be considered a positive result.

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- 5.2.5 Purposely impeding or delaying an Employee's fulfillment of the testing requirements herein by a Contractor or Subcontractor may subject the Contractor or Subcontractor to sanctions listed in Section 8.
- 5.3 Reasonable Suspicion Testing – An Employee will be required to take a drug test at any time his or her employer or the Owner reasonably believes that he or she is using or possessing a drug, displaying physical symptoms of being under the influence of drugs, or finding drug paraphernalia or open alcohol containers on the Jobsite.
- 5.4 Return to Duty Testing – As required in Section 6.0.
- 5.5 Accident Triggered Testing – An Employee will be required to take a drug test and may be subject to an onsite alcohol breathalyzer test at any time there is a Jobsite accident involving loss or significant property damage, injury or death to an Employee of the Contractor, Subcontractor, or Owner or member of the public.
- 5.5.1 As soon as practicable following an accident, the Contractor will notify the Employee(s) whose performance could have contributed to the accident of the need for the test.
- 5.5.2 The appropriate Contractor shall ensure that an Employee, required to be tested under this section, is tested as soon as practicable, but no longer than 4 hours after the accident. Employees so notified must have been given such notification at least four hours before the scheduled closing time of the testing facility. If the drug test is not conducted within 4 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.
- 5.5.3 An Employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
- 5.5.4 If an Employee fails or refuses to be tested, he/she must be removed from the Jobsite.
- 5.5.5 Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an Employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
- 5.6 All testing required by this section shall be administered according to the standards outlined in Section 4.

6.0 Consequences of a Positive Test Result

- 6.1 The disciplinary measures contained within a Contractor's or Subcontractor's drug testing program for an employee who tests positive to a mandatory drug test must include at a minimum, all of the following:
- 6.1.1 The Employee is subject to an immediate suspension from any public works Jobsite.
- 6.1.2 The Employee is not eligible for reinstatement by the Contractor or Subcontractor to any public works Jobsite until 30 days after the Employee tests negative on a ten drug panel plus alcohol test certified by a medical review officer.
- 6.1.3 The Employee is subject to unscheduled monthly random testing for at least one (1) year after reinstatement.
- 6.1.4 An Employee who has tested positive for more than one drug test within a three year period shall be permanently banned from working at public works Jobsites.
- 6.2 A Contractor or Subcontractor shall report the Positive Test Result to the Employee's professional licensing board, if applicable.

7.0 Contractor and Subcontractor Certification of Compliance with Regulations

- 7.1 Prior to the Award of a Contract:
- 7.1.1 All requests for proposals for Large Public Works Contracts awarded pursuant to 29 Del.C. §6962 shall incorporate these regulations by reference. All bids received in response to Large Public

Works Contract requests for proposal without inclusion of a Mandatory Drug Testing Program shall be deemed non-responsive.

7.1.2 Each solicitation shall include a Testing Certification Form to each bidder. The Testing Certification Form shall be executed by the bidder and all listed Subcontractors to certify to the Owner that the bidder and all Subcontractors shall adhere to the requirements defined herein.

7.1.3 Individual Testing Certification Forms shall be completed and executed by the bidder and each listed Subcontractor. The executed Testing Certification Forms shall be submitted to the Owner with the bid documents, or when Subcontractors are determined.

7.1.4 If a bidder fails to provide properly completed or executed Testing Certification Forms for itself or its listed Subcontractors as required by this section, the Owner shall determine that the bid is non-responsive according to 29 Del.C. §6962.

7.2 At bid award:

7.2.1 A Large Public Works Contract may not be awarded to a Contractor whose bid does not include a testing program certification form for all known Subcontractors at the time of award.

7.3 During the term of the contract:

7.3.1 The State shall not be obligated to pay, and the Contractor or Subcontractor shall expressly agree that, any portion of work performed by a Contractor or Subcontractor commenced before that Contractor or Subcontractor has provided a properly executed Testing Certification Form, provided however that emergency work as referenced in 3.1.4 may not be subject to this provision.

7.3.2 During the term of the contract, Contractors and Subcontractors shall submit monthly Testing Report Forms to the Owner by the 10th of each month. The forms shall at a minimum contain the following information:

7.3.2.1 The number of Employees who worked on the Jobsite during the previous month.

7.3.2.2 The number of employees subjected to random testing during the previous month.

7.3.2.3 The number of negative results and the number of positive results.

7.3.2.4 Action taken by the Contractor or Subcontractor on an Employee who failed or tested positive to a random test.

7.3.3 The general or prime Contractor shall be responsible for the timely submission of properly executed Testing Certification Forms and Testing Results Forms.

7.3.4 Any Positive Test Result including the Employee name and action taken in response by a Contractor or Subcontractor must be reported by the Contractor to the Owner within 24 hours of the Contractor receiving the test results.

7.3.5 The Owner shall have the right to periodically audit all Contractor and Subcontractor test results at the Contractor or Subcontractor's offices.

7.3.6 The failure to comply with these reporting requirements shall be considered a material breach of any agreement relating to the performance of work by the Contractor or Subcontractor.

8.0 Penalties

8.1 A Contractor or Subcontractor on a Large Public Works contract that fails to implement a Mandatory Drug Testing Program in accordance with this regulation or falsifies testing results shall be subject to the following sanctions:

8.1.1 Written warning (1st offense).

8.1.2 Prohibition from bidding on new public works jobs for a period not to exceed three months (2nd offense) and one year (3rd offense).

8.1.3 For subsequent offenses, debarment or bond revocation.

8.2 Notwithstanding any other provision of this regulation, if any failure to comply with the requirements of this regulation are particularly flagrant or egregious, the Owner may seek a termination for cause, a temporary suspension, a determination that the Contractor or Subcontractor are not responsible, debarment or bond revocation, and any other statutory, common law, or equitable remedy.

Symbol Key

Arial type indicates the text existing prior to the regulation being promulgated. Underlined text indicates new text added at the time of the proposed action. Language which is ~~stricken~~ through indicates text being deleted. **[Bracketed Bold language]** indicates text added at the time the final order was issued. ~~**[Bracketed bold stricken through]**~~ indicates language deleted at the time the final order was issued.

Final Regulations

The opportunity for public comment shall be held open for a minimum of 30 days after the proposal is published in the **Register of Regulations**. At the conclusion of all hearings and after receipt within the time allowed of all written materials, upon all the testimonial and written evidence and information submitted, together with summaries of the evidence and information by subordinates, the agency shall determine whether a regulation should be adopted, amended or repealed and shall issue its conclusion in an order which shall include: (1) A brief summary of the evidence and information submitted; (2) A brief summary of its findings of fact with respect to the evidence and information, except where a rule of procedure is being adopted or amended; (3) A decision to adopt, amend or repeal a regulation or to take no action and the decision shall be supported by its findings on the evidence and information received; (4) The exact text and citation of such regulation adopted, amended or repealed; (5) The effective date of the order; (6) Any other findings or conclusions required by the law under which the agency has authority to act; and (7) The signature of at least a quorum of the agency members.

The effective date of an order which adopts, amends or repeals a regulation shall be not less than 10 days from the date the order adopting, amending or repealing a regulation has been published in its final form in the **Register of Regulations**, unless such adoption, amendment or repeal qualifies as an emergency under §10119.

**DEPARTMENT OF AGRICULTURE
DELAWARE FOREST SERVICE**

Statutory Authority: 3 Delaware Code, Section 1101 (3 Del.C. §1011)
3 DE Admin. Code 401

ORDER**401 Forest Service Erosion and Sedimentation Regulations****I. NATURE OF PROCEEDINGS**

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agency to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations. The regulatory change set forth here is a result of this process.

Proposed amended regulation 5.0 amends a regulation to require the Delaware Forest Service to approve or deny certain permit applications within 3 working days, as part of an overall effort to increase responsiveness in connection with licensing and permitting activities.

Notice of a public comment period of thirty (30) days on this proposed amended regulation was published in the Delaware *Register of Regulations* for **August 1, 2013**. This is the Department of Agriculture's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

The Department received no public comments in response of its notice of intention to adopt the proposed amended regulations.

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Department's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Department with comments on the proposal. Having received no comments opposed to adoption, the Department is now free to adopt the proposed amended regulations.

IV. ORDER

It is hereby ordered that the proposed amendments to the Department's regulations are adopted; the text of the final regulation shall be in the form attached hereto as Exhibit A; and the effective date of this Order shall be ten (10) days from date this Order is published in the *Delaware Register of Regulations*.

***Please note that no changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 145 (17 DE Reg. 145). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

401 Forest Service Erosion and Sedimentation Regulations

PESTICIDES SECTION

Statutory Authority: 3 Delaware Code, Sections 1216-1223 (3 Del.C. §§1216-1223)
3 DE Admin. Code 601

ORDER

601 Delaware Pesticide Rules and Regulations

I. NATURE OF PROCEEDINGS

On June 14, 2012, Governor Jack Markell signed Executive Order No. 36, which requires each executive branch agency to examine their existing regulations, with a view toward streamlining or eliminating unnecessary or unduly burdensome regulations. Executive Order No. 36 requires each executive branch agency to solicit input from the public, as well as conduct its own examination of agency regulations. The regulatory change set forth here is a result of this process.

Proposed amended regulation 4.2 provides additional flexibility to small businesses that work with pest-control chemicals by increasing from 30 to 45 days the timeframe by which (1) an employee must complete a Department-approved training program, and (2) an employer must notify the Department of the hiring or termination of a registered employee.

Notice of a public comment period of thirty (30) days on this proposed amended regulation was published in the *Delaware Register of Regulations* for **August 1, 2013**. This is the Department of Agriculture's Decision and Order adopting the proposed amended regulations.

II. PUBLIC COMMENTS

The Department received no public comments in response of its notice of intention to adopt the proposed amended regulations.

III. FINDINGS AND CONCLUSIONS

The public was given the required notice of the Department's intention to adopt the proposed amended regulations and was given ample opportunity to provide the Department with comments on the proposal. Having received no comments opposed to adoption, the Department is now free to adopt the proposed amended regulations.

IV. ORDER

It is hereby ordered that the proposed amendments to the Department's regulations are adopted; the text of the final regulation shall be in the form attached hereto as Exhibit A; and the effective date of this Order shall be ten (10) days from date this Order is published in the Delaware *Register of Regulations*.

***Please note that no changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 146 (17 DE Reg. 146). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

601 Delaware Pesticide Rules and Regulations

DEPARTMENT OF EDUCATION
OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b) (14 **Del.C.** §122(b))
14 **DE Admin. Code** 910

REGULATORY IMPLEMENTING ORDER**910 Delaware Requirements for Issuance of the GED[®] Test Credential****I. Summary of the Evidence and Information Submitted**

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the GED[®] Test Credential. The regulation name has been changed to 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential. This regulation is being reviewed in order to provide greater access to a secondary credential assessment in Delaware.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on **November 2, 2013**, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities. The title of the regulation was changed in the proposed published version to expand the regulation beyond the GED[®] credential. The Department has reviewed the various Delaware Code sections related to the various references to "GED," "General Equivalency Diploma" or other language that infers a different secondary credential other than a high school diploma, and plans to address as appropriate.

II. Findings of Facts

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the GED[®] Test Credential to 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential in order to provide greater access to a secondary credential assessment in Delaware.

III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the GED[®] Test Credential. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** Delaware Requirements for Issuance of the Secondary Credential attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 910 Delaware Requirements for Issuance of the Secondary Credential hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. Text and Citation

The text of 14 **DE Admin. Code** Delaware Requirements for Issuance of the Secondary Credential amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** Delaware Requirements for Issuance of the Secondary Credential in the *Administrative Code of Regulations* for the Department of Education.

V. Effective Date of Order

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on **December 19, 2013**. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 19th day of December 2013.

Department of Education
Mark T. Murphy, Secretary of Education

Approved this 19th day of December 2013

State Board of Education

Teri Quinn Gray, Ph.D., President

Jorge L. Melendez, Vice President

G. Patrick Heffernan

Barbara B. Rutt

Gregory B. Coverdale, Jr.

Terry M. Whittaker, Ed.D.

Randall L. Hughes II

910 Delaware Requirements for issuance of the **GED[®] Test Secondary Credential**

The ~~A~~ Delaware ~~GED[®] test credential~~ secondary credential is given to persons who satisfactorily pass the ~~GED[®] Test~~ a recognized secondary credential assessment approved by the Delaware Department of Education.

1.0 Eligibility to take ~~the GED[®] test~~ a secondary credential assessment

- 1.1 For persons 18 years of age or older, an applicant shall:
 - 1.1.2 Be a resident of Delaware or, if a resident of another state, be currently employed in Delaware and have been so employed for a minimum of six months prior to taking the test; and
 - 1.1.2 Certify under his or her signature on the GED[®] secondary credential assessment application form that he or she is not enrolled in a public or non public school program; ~~and~~
 - 1.1.3 ~~Provide a verified copy of the Official GED Practice Test[®] indicating the applicant has passed the Official GED Practice Test[™] with a score of 2450 or better and not less than 470 on each of the 5 sub test areas.~~
- 1.2 For a person 16 or 17 years of age an applicant shall:
 - 1.2.1 Seek a waiver of the 18 years of age requirement by completing a written application to the Delaware Department of Education that includes showing good cause for taking the test early and designating where the test will be taken; and
 - 1.2.2 Be a resident of the State of Delaware; and
 - 1.2.3 Verify that they are at least 16 years of age at the time of the application for the waiver of the age requirement using a birth certificate, ~~drivers~~ driver's license, a State of Delaware Identification Card or other comparable and reliable documentation of age; and
 - 1.2.4 Provide verification of withdrawal from the applicant's public or non public school program; and
 - 1.2.5 Provide a transcript from the applicant's public or non public school program; ~~and~~

- 1.2.6 Provide a verified copy of the Official GED Practice Test™ indicating the applicant has passed the Official GED Practice Test™ with a score of 2450 or better and not less than 470 on each of the 5 sub-test areas.

2.0 **Scores Required for the Delaware GED® test a Delaware secondary Credential**

An individual shall have a standard score of not less than 410 on each of the five tests with an average standard score of not less than 450 for all five tests and a total standard score of not less than 2250 in order to be issued a GED® test credential attain the minimum passing standard as approved by the Delaware Department of Education.

3.0 **Retesting Assessment Approval Process**

Forty five days shall lapse prior to retesting and instruction is recommended before retesting.

- 3.1 The assessment provider must complete a DOE approved application. The application must include at minimum the following:

- 3.1.1 provider's qualification and experience;
- 3.1.2 assessment content and form;
- 3.1.3 validation and norming processes;
- 3.1.4 assessment delivery;
- 3.1.5 technology processes;
- 3.1.6 security provisions;
- 3.1.7 accommodations processes;
- 3.1.8 assessment scoring and reporting processes;
- 3.1.9 assessment data access requirements;
- 3.1.10 practice test and supplementary instructional materials;
- 3.1.11 staff training;
- 3.1.12 alignment with college and career readiness standards and Delaware accountability system; and
- 3.1.13 cost and timeframe for implementation.

4.0 **Currently Recognized Assessments and Publication**

- 4.1 The GED® Test has been previously approved and is a Department of Education recognized secondary credential assessment.
- 4.2 DOE will publish annually a list of approved assessments.

PROFESSIONAL STANDARDS BOARD

Statutory Authority: 14 Delaware Code, Section 122(d) (14 Del.C. §122(d))
14 DE Admin. Code 1503

REGULATORY IMPLEMENTING ORDER

1503 Educator Mentoring

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Professional Standards Board, acting in cooperation and collaboration with the Department of Education, seeks the consent of the State Board of Education to amend regulation 14 **DE Admin. Code** 1503 Educator Mentoring. The regulation applies to the comprehensive induction program, including mentoring and professional development required of educators, pursuant to 14 **Del.C.** §1210. It is necessary to amend this regulation in order

to update and clarify some of the definitions, requirements and to align title for state-wide program and to establish monitoring and reporting processes by Department to Professional Standards Board.

Notice of the proposed adoption of the regulation was published in the Delaware *Register of Regulations* on November 1, 2013. The notice invited written comments. Comments were received from the State Council for Persons with Disabilities. The comments included usage edits to the language and suggestions for including additional language. The suggested comments were considered and all necessary edits were made to clarify the language. No additional comments were received regarding the proposed amendments to this regulation.

II. FINDINGS OF FACTS

The Professional Standards Board and the State Board of Education find that it is appropriate to adopt this regulation to comply with changes in statute.

III. DECISION TO ADOPT THE REGULATION

For the foregoing reasons, the Professional Standards Board and the State Board of Education conclude that it is appropriate to adopt the regulation. Therefore, pursuant to 14 **Del.C.** §1205(b), the regulation attached hereto as Exhibit "A" is hereby adopted. Pursuant to the provision of 14 **Del.C.** §122(e), the regulation hereby adopted shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of the regulation adopted shall be in the form attached hereto as Exhibit "A", and said regulation shall be cited as 14 **DE Admin. Code** 1503 of the *Administrative Code of Regulations* of the Professional Standards Board.

V. EFFECTIVE DATE OF ORDER

The effective date of this Order shall be ten (10) days from the date this Order is published in the Delaware *Register of Regulations*.

APPROVED BY THE PROFESSIONAL STANDARDS BOARD THE 5th DAY OF DECEMBER, 2013

Chris Kenton, Chair	Rosaria Macera
Diane Albanese	Byron Murphy
Michael Casson	Wendy Murray
Joanne Christian	Mary Pinkston
Samtra Devard	Whitney Price
Stephanie DeWitt	JoAnn Reynolds
Cristy Greaves	Stephanie Smith
David Kohan	Jacque Wisnauskas

IT IS SO ORDERED the 19th day of DECEMBER, 2013.

Department of Education

Mark Murphy, Secretary of Education

Approved the 19th day of December, 2013

State Board of Education

Teri Quinn Gray, Ph.D., President	Gregory B. Coverdale, Jr.
Jorge L. Melendez, Vice President	Terry M. Whittaker, Ed.D.
G. Patrick Heffernan	Randall L. Hughes
Barbara B. Rutt	

1503 Educator Mentoring

1.0 Content

This regulation shall apply to comprehensive induction programs, including mentoring and professional development activities required of educators, pursuant to 14 Del.C. Ch. 12.

2.0 Definitions

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

~~"Approved Mentoring Program"~~ **Approved Comprehensive Induction Program** means all mentoring educator induction programs, including mentoring and professional development, approved by either the Department or the Standards Board to provide mentoring and professional development for educators.

Contact Hours means the face-to-face time a Mentor or Lead Mentor spends with his/her ~~Protégé mentee~~ working specifically on mentoring activities.

Department means the Delaware Department of Education.

DPAS means an approved State educator performance evaluation system pursuant to 14 Del.C. Ch. 12, Subchapter VII.

Educator means a person licensed and certified by the State under 14 Del.C. Ch. 12, to engage in the practice of instruction, administration or other related professional support services in Delaware public schools, including charter schools, pursuant to rules and regulations promulgated by the Standards Board and approved by the State Board. For the purposes of this regulation, "the term educator" shall also include substitute teachers who are employed on long-term temporary contracts of ninety-one (91) days or longer in duration, with the intent or agreement to use the teaching experience to meet the alternative to the student teaching experience in the Initial License under 14 Del.C. §1210. This definition shall be construed to provide mentoring to long term substitute teachers who are currently working towards their Initial License.

Employing Authority means any entity which employs educators, and includes, but is not limited to, school districts, charter schools, boards of directors, or management companies.

~~"Experienced Educator" is an educator who holds a Continuing or Advanced License, or an educator who held a Professional Status Certificate issued prior to August 1, 2003. An educator from another jurisdiction who has completed three (3) or more years of successful teaching may be considered an experienced educator.~~

Lead Mentor means a teacher, specialist, or administrator who holds a Continuing or Advanced License, has participated in the training approved by the Department for Lead Mentors is employed by an employing authority as a Lead Mentor and performs the duties and responsibilities assigned that position. Educators serving as Lead Mentors must ~~have satisfactory~~ be rated as Highly Effective or Effective in DPAS evaluations, and may not be on a DPAS Improvement Plan.

License means a credential which authorizes the holder to engage in the practice for which the license is issued.

Mentor means an educator who holds a Continuing or Advanced License and has participated in the training for Mentors specified by the Department and the employing authority. Educators serving as Mentors must ~~have satisfactory~~ be rated as Highly Effective or Effective in DPAS II evaluations, and may not be on a DPAS Improvement Plan.

Mentoring means activities, training and service in mentoring support or assistance provided through a formally organized ~~approved mentoring~~ approved comprehensive induction program or such supplemental mentoring programs as required by regulation or by the educator's employing authority. Mentoring includes, but is not limited to the mentoring that occurs in the comprehensive induction programs required for educators during their three (3) year Initial Licensure period, a Continuing Licensure period, or any other mentoring program as required by law.

"New to a Category" means that an educator has moved from the position of a teacher to the position of either a specialist or an administrator; has moved from the position of an administrator to the position of a teacher or a specialist; or has moved from the position of a specialist to the position of a teacher, an administrator or to a different type of certificated specialist position. Examples include but are not limited to a teacher changing positions to a school nurse, or a teacher changing positions to a principal or assistant principal, or a school nurse changing positions to a school counselor, or a teacher changing positions to a school counselor.

"New Educator" means an educator who holds an Initial License.

"Site Coordinator" means an individual appointed by an employing authority to oversee an ~~educator mentoring~~ comprehensive induction program.

"Specialist" is an educator other than a teacher or administrator and includes, but is not limited to School Counselors, Library Media Specialists, School Psychologists and School Nurses.

"Standards Board" means the Professional Standards Board established pursuant to 14 **Del.C.** §1201.

"State Board" means the State Board of Education of the State pursuant to 14 **Del.C.** §104.

3.0 **Mentoring Comprehensive Educator Induction Programs**

- 3.1 The Department shall develop and approve comprehensive educator ~~mentoring~~ induction programs for the following:
 - 3.1.1 ~~All mentoring programs for~~ The teachers' program shall be aligned with Delaware Teaching Standards (INTASC), Danielson's (2007) "A Framework for Teaching" and shall include training and support of the components of DPAS, including descriptive, non-evaluative feedback.
 - 3.1.2 ~~All mentoring programs for~~ The specialists' program shall be aligned with applicable national specialist standards, Danielson's (2007) "A Framework for Teaching" and shall include training and support of the components of DPAS, including descriptive, non-evaluative feedback.
 - 3.1.3 ~~All mentoring programs for~~ The administrators' program shall be based on 14 **DE Admin. Code** 1590 Delaware Administrator Standards, aligned with Danielson's (2007) "A Framework for Teaching" and shall include training and support of the components of DPAS, including descriptive, non-evaluative feedback.
- 3.2 An employing authority may develop **[and]** then implement a distinct ~~educator mentoring~~ comprehensive induction program as specified in Sections 4, 5 or 6;
 - 3.2.1 Each ~~mentoring~~ comprehensive induction program shall meet the requirements in the distinct mentoring induction programs as listed in Sections 4, 5 or 6.
 - 3.2.2 The employing authority shall submit each distinct ~~mentoring~~ comprehensive induction program plan to the ~~Standards Board~~ Department for review and consideration of approval according to the application procedure and timelines set by the Department.
 - 3.2.3 ~~The employing authority's mentoring program must be approved by the Standards Board a minimum of three (3) months prior to implementation.~~
- 3.3 Failure by an educator to successfully complete ~~mentoring the~~ requirements of the applicable comprehensive induction program shall result in the denial of the Continuing License or suspension of the license as provided in 14 **DE Admin. Code** 1511 Issuance and Renewal of Continuing License.
- 3.4 The Department shall also develop the following programs:
 - 3.4.1 A ~~mentor~~ training program for Lead Mentors, and
 - 3.4.2 A ~~mentor~~ training program for Administrator Lead Mentors.

4.0 **New Educator Mentoring**

- 4.1 In accordance with 14 **Del.C.** §1210(c), all educators who hold an Initial License shall participate in ~~mentoring~~ comprehensive induction program activities approved by the Department ~~or the Standards Board~~. Each new educator shall at a minimum be assigned a Mentor for his or her first year on an active Initial License.

- 4.1.1 The Mentor shall assist the new educator in becoming acclimated to the role, the school or other setting, and the Delaware content standards, the Delaware Professional Teaching Standards, applicable national specialist standards, or the Delaware Administrator Standards.
- 4.1.2 The new educator shall meet with his or her Mentor for at least thirty (30) documented hours, which may include a combination of in school and after school time, during the first year of employment.
- 4.1.3 The assignment of a Mentor beyond the first year of employment in Delaware is at the discretion of the employing authority, based upon a review of the educator's performance.
- 4.1.4 The employing authority shall provide continuing support to the new educator during the second and third year of their Initial License.
- 4.2 The new educator shall;
 - 4.2.1 Attend such activities as are planned by the Department or employing authority during the three (3) year term of the Initial License, as part of the specified ~~new educator mentoring~~ program and offered by individual employing authorities, and
 - 4.2.2 Complete the requirements of the applicable ~~new educator mentoring~~ program, which shall consist of no more than sixty (60) hours in the first year, inclusive of meetings between the Mentor and the new educator, and no more than thirty (30) hours in the second and third years.

5.0 Experienced Educators New to the State of Delaware

Experienced educators new to the State of Delaware who hold a Continuing or Advanced License shall, within the first year of employment, participate in, and successfully complete, an approved ~~mentoring~~ comprehensive induction program consisting of at least thirty (30) documented hours targeted to the educator's needs, which focuses on current best practices in curriculum, instruction and assessment aligned to state or national standards.

6.0 Experienced Educators New to a Category

- 6.1 Experienced educators who are new to a category shall within the first year of employment be assigned a Mentor, and participate in and complete an approved ~~mentoring~~ comprehensive induction program consisting of at least thirty (30) documented hours addressing educator's specific needs, which focuses on current best practices in curriculum, instruction, assessment or a specialist's or an administrator's position within the district or charter school and is aligned to State and national standards.
 - 6.1.1 The assignment of a Mentor beyond the first year of employment is at the discretion of the employing authority, based upon a review of the teacher's, specialist's or administrator's performance.

7.0 Duties and Responsibilities of Mentors

- 7.1 Lead Mentors shall:
 - 7.1.1 Complete the annual approval process as defined by the Department.
 - 7.1.2 ~~Lead Mentors shall~~ Work a minimum of forty-five (45) documented hours per school year ~~in the~~ on Department-specified or ~~Department-~~approved Lead Mentor activities. Lead Mentor activities may include, but are not limited to, a combination of in school and after school time per year in the program in a leadership position, planning mentor training, providing mentor training to aspiring Mentors, assisting Mentors with specific issues, and other responsibilities as directed by the site coordinator.
 - 7.1.23 Teacher and Specialist Lead Mentors shall satisfactorily complete training in mentoring and coaching development approved by the Department for Lead Mentors. A minimum of one (1) Lead Mentor per district shall be trained in Danielson's (2007) "A Framework for Teaching" or the applicable Department approved specific specialist mentoring program.

- 7.1.34 Administrator Lead Mentors shall satisfactorily complete training in mentoring and coaching development approved by the Department and based on 14 **DE Admin. Code** 1590 Delaware Administrator Standards and aligned with Danielson's (2007) "A Framework for Teaching".
- 7.2 Educator Mentors shall:
- 7.2.1 Complete the annual approval process as defined by the Department, and
- 7.2.42 Facilitate thirty (30) documented contact hours, which may include a combination of in school and after school time, with their protégées mentees annually which are designed to help the new teacher or specialist acquire additional skills and knowledge appropriate to their specific positions, and
- 7.2.23 Submit contact log documentation accounting for all mentoring activities provided during the specified time period to their coordinator by January 15 and May 15. This documentation shall be forwarded to the Department by May 30.
- 7.2.34 Teacher and Specialist Mentors ~~must~~ shall:
- 7.2.34.1 Satisfactorily complete training in mentoring and coaching development aligned with Danielson's (2007) "A Framework for Teaching" or the appropriate Department approved specific specialist mentoring program provided by the Lead Mentors, and
- 7.2.34.2 Attend structured meetings concerning the ~~mentoring~~ comprehensive induction program as directed by the **[district employing authority]**.
- 7.2.45 Administrator Mentors shall:
- 7.2.45.1 Satisfactorily complete training in mentoring and coaching development based on 14 **DE Admin. Code** 1590 Delaware Administrator Standards and aligned with Danielson's (2007) "A Framework for Teaching" and DPAS, and
- 7.2.45.2 Satisfactorily complete training in DPAS, and
- 7.2.45.3 Attend a minimum of three (3) structured meetings with protégées mentees.
- 8.0 Payment of Salary Supplement**
- Mentors and Lead Mentors who are paid in accordance with the provisions of 14 **Del.C.** §1305 shall be paid an extra responsibility salary supplement annually, upon documentation of satisfactory fulfillment of duties and responsibilities, in accordance with the schedule adopted annually by the Standards Board, with concurrence of the State Board.
- 9.0 Reporting**
- The Department shall require and collect data used to evaluate the Comprehensive Induction Program and shall provide quarterly reports to the Professional Standards Board. These data will include at a minimum, an assessment of the implementation of the Comprehensive Induction Program and Mentors' and Mentees' compliance and delivery.
-

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
Statutory Authority: 31 Delaware Code, Section 512 (31 **Del.C.** §512)

ORDER

Medicaid Expansion under the Affordable Care Act 2014 – Modified Adjusted Gross Income (MAGI) Methodology - Reasonable Classification of Individuals Under Age 21 and Household Composition

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Medicaid and Medical Assistance (DMMA) initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Modified Adjusted

Gross Income (MAGI) provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program), specifically, *Reasonable Classifications of Individuals under Age 21 and MAGI Household Composition*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the November 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced by November 30, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The purpose of this notice is to advise the public that the Division of Medicaid and Medical Assistance (DMMA) is proposing to amend rules in Division of Social Services Manual (DSSM) regarding the Modified Adjusted Gross Income (MAGI) provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program), specifically, *Reasonable Classifications of Individuals under Age 21 and MAGI Household Composition*. The Patient Protection and Affordable Care Act of 2010 mandates significant changes in how eligibility is determined for medical assistance programs for children, parent/caretaker relatives and pregnant women beginning January 1, 2014.

Statutory Authority

- Patient Protection and Affordable Care Act (Pub. L. No. 111-148 as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111-152)), together known as the *Affordable Care Act*
- 42 CFR 431 Subpart G, *Section 1115 Demonstrations (Family Planning)*
- 42 CFR 435.222, *Optional eligibility for reasonable classifications of individuals under age 21*
- 42 CFR 435.603, *Application of modified adjusted gross income (MAGI)*
- 42 CFR 435.912, *Timely determination of eligibility*
- 42 CFR 435.916, *Periodic renewal of Medicaid eligibility*
- 42 CFR 457.315, *Application of modified adjusted gross income and household definition*

Background

The Affordable Care Act (ACA) was signed into law on March 23, 2010. Under the ACA, health reform will make health care more affordable, guarantee choices when purchasing health insurance, expands Medicaid coverage to millions of low-income Americans.

The ACA includes many provisions related to eligibility determinations for both Medicaid and the Children's Health Insurance Program (CHIP). To provide coordinated guidance on the eligibility determination process, the Centers for Medicare and Medicaid Services (CMS) published a final/interim final rule "Medicaid Program: Eligibility Changes under the Affordable Care Act of 2010" incorporating significant changes on March 23, 2012 at <http://www.gpo.gov/fdsys/pkg/FR-2012-03-23/pdf/2012-6560.pdf>. Additional guidance on the eligibility determination process was issued by CMS in a final rule "Medicaid and Children's Health Insurance Programs: Essential Health Benefits in Alternative Benefit Plans, Eligibility Notices, Fair Hearing and Appeal Processes, and Premiums and Cost Sharing; Exchanges: Eligibility and Enrollment" on July 15, 2013 at <http://www.gpo.gov/fdsys/pkg/FR-2013-07-15/pdf/2013-16271.pdf>.

In accordance with recent CMS guidance, the Division of Medicaid and Medical Assistance (DMMA) needs to craft amendments to some existing rules and delete some rules in order to implement the federal regulations under PPACA.

Summary of Proposal

Description of Rule Changes

These amendments to the eligibility rules reflect programmatic changes affecting Delaware Medicaid programs as required by the federal Affordable Care Act (ACA). This regulatory action proposes to codify policy and procedural changes to the Medicaid program and Children's Health Insurance Program (CHIP) related to *MAGI reasonable classifications of individuals under age 21 and MAGI household composition* to be consistent with the ACA.

The proposed changes affect the following policy sections in the Division of Social Services Manual (DSSM): DSSM 14000, DSSM 15000 and DSSM 16000.

DSSM 14000, DSSM 15000 and DSSM 16000

Specific Changes, Revisions, and Additions to Eligibility Rules

The proposed changes affect the following general eligibility rules in section 14000, eligibility group rules in section 15000 and in section 16000, MAGI financial methodologies rules of the Division of Social Services Manual (DSSM).

Proposed for adoption are the following specific rule changes in sections 14000, 15000 and 16000 identified and detailed below. The rule name is *italicized* and substantive changes noted.

Section	Description of Revisions to DSSM 14000, 15000 and 16000
14100.5.1	This rule, <i>Timely Determination of Eligibility</i> , is revised to clarify the time standards for a determination of eligibility when an application is submitted via the Federally Facilitated Marketplace (FFM). The timeliness standard begins on the date the application is transferred from the FFM to the agency.
14100.6	This rule is renamed <i>Annual Renewal of Eligibility</i> with new content to describe the streamlined renewal process in accordance with the requirements under the Affordable Care Act. The agency will redetermine eligibility without requiring information from the individual if able to do so based on electronic data sources. When the agency cannot renew eligibility using electronic data sources, a pre-populated renewal form will be sent to the individual. If the individual loses eligibility for failure to respond to the renewal form, eligibility can be reconsidered without a new application if the individual responds within four months after the date of termination.
14800	This rule, <i>Verifications of Factors of Eligibility</i> , is revised to clarify the post-enrollment verification process and time frames.
15510	This rule, <i>Foster Children Group</i> , becomes obsolete and is deleted and repealed. Children in foster homes or private institutions will be eligible under <i>15300 Children Group</i> effective January 1, 2014. This is required because financial eligibility under the optional <i>Foster Children Group</i> has a lower income limit than financial eligibility under the mandatory <i>Children Group</i> .
15510.1	This rule, <i>Foster Children Group General Eligibility Requirements</i> , becomes obsolete and is deleted and repealed. Children in foster homes or private institutions will be eligible under <i>15300 Children Group</i> .
15510.2	This rule, <i>Technical Eligibility</i> , becomes obsolete and is deleted and repealed. Children in foster homes or private institutions will be eligible under <i>15300 Children Group</i> .
15510.3	This rule, <i>Financial Eligibility</i> , becomes obsolete and is deleted and repealed. Children in foster homes or private institutions will be eligible under <i>15300 Children Group</i> .
15510.4	This rule, <i>Effective Date of Coverage</i> , becomes obsolete and is deleted and repealed. Children in foster homes or private institutions will be eligible under <i>15300 Children Group</i> .
15540	This rule, <i>Infants Awaiting Adoption Group</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> effective January 1, 2014. This is required because financial eligibility under the optional <i>Infants Awaiting Adoption Group</i> has a lower income limit than financial eligibility under the mandatory <i>Children Group</i> .
15540.1	This rule, <i>Infants Awaiting Adoption Group General Eligibility Requirements</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> .
15540.2	This rule, <i>Technical Eligibility</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> .

15540.3	This rule, <i>Financial Eligibility</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> .
15540.4	This rule, <i>Effective Date of Coverage</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> .
15540.5	This rule, <i>Termination of Eligibility</i> , becomes obsolete and is deleted and repealed. The infants will be eligible under <i>15300 Children Group</i> .
15700	This rule, <i>Family Planning Group</i> , becomes obsolete and is deleted and repealed. Women with household income that does not exceed 133% of the federal poverty level (FPL) will be eligible under <i>15400 Adult Group</i> effective January 1, 2014, with full Medicaid benefits. Women with household income that exceeds 133% FPL will be terminated from Medicaid effective January 1, 2014, and referred to the Federally Facilitated Marketplace (FFM) to obtain health care coverage. Women will receive advance notice of termination from Medicaid that allows adequate time to obtain health care coverage via the FFM.
15700.1	This rule, <i>Family Planning Group General Eligibility Requirements</i> , becomes obsolete and is deleted and repealed.
15700.2	This rule, <i>Technical Eligibility</i> , becomes obsolete and is deleted and repealed.
15700.3	This rule, <i>Financial Eligibility</i> , becomes obsolete and is deleted and repealed.
15700.4	This rule, <i>Benefits</i> , becomes obsolete and is deleted and repealed.
15700.5	This rule, <i>Termination of Eligibility</i> , becomes obsolete and is deleted and repealed.
16100	This rule, <i>Definitions</i> , is revised to add a definition of spouse.
16400.4	This rule, <i>Rule for Married Couples</i> , is revised to clarify when married couples are included in the modified adjusted gross income household together.

CMS has stated that it will issue additional regulatory and subregulatory guidance on related policy and operational issues. Eligibility rules and State plan amendments (SPAs) will be further amended to implement other ACA provisions. DMMA will continue to work with CMS to identify and formulate these rules and SPAs.

Fiscal Impact

The proposed regulation imposes no increase in costs on the General Fund.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE

DMMA received no public comments and no changes were made to the proposed regulation.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend Division of Social Services Manual (DSSM) regarding the Modified Adjusted Gross Income (MAGI) provisions related to eligibility determinations for certain medical assistance programs (Medicaid and Children's Health Insurance Program), specifically, *Reasonable Classifications of Individuals under Age 21 and MAGI Household Composition*, is adopted and shall be final effective January 10, 2014.

Rita M. Landgraf, Secretary, DHSS

*Please note that no changes were made to the regulation as originally proposed and published in the November 2013 issue of the *Register* at page 477 (17 DE Reg. 477). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

Medicaid Expansion under the Affordable Care Act 2014 – Modified Adjusted Gross Income (MAGI) Methodology - Reasonable Classification of Individuals Under Age 21 and Household Composition

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)t(1) (16 Del.C., §122(3)t(1))

ORDER

4459B Residential Property Renovation, Repair and Painting

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Regulations Governing Residential Property Renovation, Repair and Painting. The DHSS proceedings to adopt the regulation were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Section 122(3)t.1.

On November 1, 2013 (Volume 17, Issue 5), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulation, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulation be delivered to DHSS by December 2, 2013, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulation.

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) Regulations Governing Residential Property Renovation, Repair and Painting were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*.

No oral or written comments were received on the proposed regulation during the public comment period (November 1, 2013 through December 2, 2013) and only minor non-substantive changes were made to the proposed regulation. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

The public comment period was open from November 1- December 2, 2013.

The regulation has been approved by the Delaware Attorney General's office and the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

There were no public comments received and only minor non-substantive changes were made to the proposed regulation. Therefore, no evaluation or summarization of comments is presented in the accompanying "Summary of Evidence." The Department finds that the proposed regulation, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Regulations Governing Residential Property Renovation, Repair and Painting are adopted and shall become effective January 11, 2014, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

4459B Residential Property Renovation, Repair and Painting

(Break in Continuity of Sections)

~~[(40 CFR §746.83)]~~

2.0 Definitions

- 2.1 For purposes of these regulations, the definitions in 16 DE Admin. Code 4459, as well as the following definitions apply. The following words and terms when used in this regulation shall have the following meaning unless the context clearly indicates otherwise:

"Certified Renovator" means an individual who has been certified by the Secretary to perform renovations.

"Child-Occupied Facility" means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under six years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to day-cares, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. Common areas that children under age six only pass through, such as hallways, stairways and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six.

"Cleaning Verification Card" means a card developed and distributed, or otherwise approved, by EPA for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether post-renovation cleaning has been properly completed.

"Component or Building Component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: ceilings, crown moldings, walls, chair rails, doors, door trim, floors, fireplaces, radiators, and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, windows heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops and air conditioners; and exterior components such as: painted roofing, chimneys, flashing, gutters and down spouts, ceilings, soffits, fascias, rake boards, corner boards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes, and wells and air conditioners.

"Dry Disposable Cleaning Cloth" means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or counter tops.

"EPA" means U.S. Environmental Protection Agency.

"Firm" means a company, partnership, corporation, sole proprietorship or individual doing business, association, or other business entity; a Federal, State, Tribal, or local government agency; or a nonprofit organization.

"HEPA Vacuum" means a vacuum cleaner which has been designed with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particulates of 0.3 microns with 99.97% efficiency. The vacuum cleaner must be designed so that all the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. HEPA vacuums must be operated and maintained in accordance with the manufacturer's instructions.

"Interim Controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

["Lead-Based Paint Activities" means, in the case of target housing and child-occupied facilities, inspection, risk assessment, abatement, renovation and dust sampling as provided in these regulations and in 16 DE Admin. Code 4459.]

"Minor Repair and Maintenance Activities" means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt six square feet or less of painted surface per room for interior activities or 20 square feet or less of painted surface for exterior activities where none of the work practices prohibited or restricted by 4.1.3 are used and where the work does

not involve window replacement or demolition of painted surface areas. When removing painted components, or portions of painted components, the entire surface area removed is the amount of painted surface disturbed. Jobs, other than emergency renovations, performed in the same room within the same 30 days must be considered the same job for the purpose of determining whether the job is a minor repair and maintenance activity.

"Painted Surface" means a component surface covered in whole or in part with paint or other surface coatings.

"Pamphlet" means the EPA pamphlet titled "Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools" developed under section 406(a) of the Toxic Substances Control Act of 1976, as amended, (15 USC §2601 et.seq.) (TSCA) for use in complying with section 406(b) of TSCA, or any State of Delaware pamphlet approved by EPA pursuant to 40 CFR §745.326 that is developed for the same purpose. This includes reproductions of the pamphlet when copied in full and without revision or deletion of material from the pamphlet (except for the addition or revision of State or local sources of information).

"Person" means any natural or judicial person including any individual, corporation, partnership, or association; any Indian Tribe, State, or political subdivision thereof; any interstate body; and any department, agency, or instrumentality of the Federal, State or local government.

"Recognized Test Kit" means a commercially available kit recognized by EPA under 40 CFR §745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5% lead by weight, in a paint chip, paint powder, or painted surface.

"Renovator" means an individual who either performs or directs workers who perform renovations.

"Secretary" means the Administrator of the Department of Health and Social Services (DHSS) of the State of Delaware or the Secretary's designee, who shall hereafter in this document be referred to as: Secretary; The Secretary; or, Secretary, DHSS.

"Target Housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any one or more children age 6 years or under resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling.

"Training Hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and, if applicable, hands-on experience.

"Vertical Containment" means a vertical barrier consisting of plastic sheeting or other impermeable material over scaffolding or a rigid frame, or an equivalent system of containing the work area. Vertical containment is required for some exterior renovations, but it may be used on any renovation.

"Wet Disposable Cleaning Cloth" means a commercially available, pre-moistened white disposable cloth designed to be used for cleaning hard surfaces, such as uncarpeted floors or counter tops.

"Wet Mopping System" means a device with the following characteristics: a long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficacy.

"Work area" means the area that the certified Renovator establishes to contain the dust and debris generated by a renovation.

*Please note that no additional changes were made to the regulation as originally proposed and published in the November 2013 issue of the *Register* at page 485 (17 DE Reg. 485). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

4459B Residential Property Renovation, Repair and Painting

FINAL REGULATIONS

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Chapter 49A (16 **Del.C.**, Ch. 49A)
16 **DE Admin. Code** 4470

ORDER

4470 State of Delaware Medical Marijuana Code

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS") initiated proceedings to adopt the State of Delaware Medical Marijuana Code. The DHSS proceedings to adopt the regulations were initiated pursuant to 29 **Delaware Code** Chapter 101 and authority as prescribed by 16 **Delaware Code**, Chapter 49A.

On October 1, 2013 (Volume 17, Issue 4), DHSS published in the *Delaware Register of Regulations* its notice of proposed regulations, pursuant to 29 **Delaware Code** Section 10115. It requested that written materials and suggestions from the public concerning the proposed regulations be delivered to DHSS by October 31, 2013, after which time the DHSS would review information, factual evidence and public comment to the said proposed regulations.

Written comments were received during the public comment period and evaluated. The results of that evaluation are summarized in the accompanying "Summary of Evidence."

SUMMARY OF EVIDENCE

In accordance with Delaware Law, public notices regarding proposed Department of Health and Social Services (DHSS) regulations governing the State of Delaware Medical Marijuana Act were published in the *Delaware State News*, the *News Journal* and the *Delaware Register of Regulations*. Written comments were received on the proposed regulations during the public comment period (October 1, 2013 through October 31, 2013). Entities offering written comments included:

- "Marijuana Policy Project
- "David Turner
- "Todd Kitchen
- "Jim Phillips
- "Governor's Advisory Council for Exceptional Citizens
- "State Council for Persons with Disabilities
- "Paul Baumbach, State Representative, 23rd RD
- "Arlene Gordon
- "Cindy Hall
- "Nicole Harris
- "Janet Schwartz
- "Joseph H. Carsello
- "Theresa Jelenek
- "Joseph Lynch
- "M.S. Lally & Associates on behalf of DE Compassion Care, Inc.
- "Christopher & Elizabeth Cusack
- "Thomas P. McGonigle, Drinker Biddle & Reath LLP
- "Americans for Safe Access

Public comments and the DHSS (Agency) responses can be found in the online version of the regulation:
<http://regulations.delaware.gov/register/january2014/final/17 DE Reg 738 01-01-14.htm>

The public comment period was open from October 1, 2013 through October 31, 2013.

Based on comments received during the public comment period only non-substantive changes have been made to the proposed regulation. The regulation has been approved by the Cabinet Secretary of DHSS.

FINDINGS OF FACT:

Based on public comments received, non-substantive changes were made to the proposed regulations. The Department finds that the proposed regulations, as set forth in the attached copy should be adopted in the best interest of the general public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed State of Delaware Medical Marijuana Code regulations are adopted and shall become effective January 11, 2014, after publication of the final regulation in the *Delaware Register of Regulations*.

Rita M. Landgraf, Secretary

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

4470 State of Delaware Medical Marijuana Code

DIVISION OF SOCIAL SERVICES

Statutory Authority: 31 Delaware Code, Section 512 (31 Del.C. 512)

ORDER

11003.7.5 Income Eligible/Education and Post-Secondary Education

Child Care Subsidy Program

Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility Participation

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("Department") / Division of Social Services initiated proceedings to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility Participation*. The Department's proceedings to amend its regulations were initiated pursuant to 29 **Delaware Code** Section 10114 and its authority as prescribed by 31 **Delaware Code** Section 512.

The Department published its notice of proposed regulation changes pursuant to 29 **Delaware Code** Section 10115 in the November 2013 *Delaware Register of Regulations*, requiring written materials and suggestions from the public concerning the proposed regulations to be produced November 30, 2013 at which time the Department would receive information, factual evidence and public comment to the said proposed changes to the regulations.

SUMMARY OF PROPOSAL

The proposal described below amends policies in the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility Participation*.

Statutory Authority

45 CFR §98.20, *A child's eligibility for child care services*

Background

Delaware Health and Social Services ("DHSS")/Division of Social Services ("DSS") is designated as the lead agency with primary responsibilities for the planning and administration of child care subsidies funded with the Child Care Development Fund.

The Child Care and Development Fund ("CCDF") Block Grant Act of 1990, as amended, 42 USC § 9858b (b)(1)(A), (the "Act") requires the Lead Agency to "administer, directly, or through other governmental or non-governmental agencies" the funds received. The regulations at 45 CFR 98.11 provide that, in addition to retaining

“overall responsibilities” for the administration of the program, the Lead Agency must also (among other things) promulgate all rules and regulations governing the overall administration of the CCDF program.

Summary of Proposed Changes

The Child Care Subsidy Program is available to eligible families while the parents/caretakers attend education programs. Amended **DSSM 11003.7.5, ~~Income Eligible/Education and Post-Secondary Education~~ *Determining High School/GED Eligibility*** and **NEW DSSM 11003.7.5, *Determining Post-Secondary Eligibility and Participation*** are proposed to clarify eligibility determinations for subsidized child care services for parents/caretakers who attend high school or GED program or post-secondary education program. The proposed rule change simplifies the language that DSS expects the course of instruction will lead to employment by removing the examples and further clarifies that parents/caretakers who already have a Bachelor’s degree or higher are not eligible for subsidized child care services.

The applicable federal citation is also added to each policy section.

SUMMARY OF COMMENTS RECEIVED WITH AGENCY RESPONSE AND EXPLANATION OF CHANGE(S)

The Governor’s Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) offered the following observations and recommendations summarized below. The Division of Medicaid and Medical Assistance (DMMA) has considered each comment and responds as follows.

Earlier this year, the Councils commented on a proposed DSS regulation which addressed the types of post-secondary education that would qualify a student for enrollment in the child care subsidy program. We noted ambiguity in regulatory provisions. In response, the Division deleted a section in anticipation of issuing a new regulation. See 16 DE Reg. 717 (January 1, 2013) (proposed); 16 DE Reg. 990 (March 1, 2013) (final)]. DSS is now issuing a new proposed regulation. The standards are brief and clarify that a caregiver with a Bachelor’s degree or higher is not eligible.

GACEC and SCPD endorse the proposed regulation with one minor recommendation on punctuation, noted by GACEC as follows:

In section 11003.7.5.1, paragraph 1A, second bullet, a semi-colon should precede the word “and”.

Agency Response: DSS accepts the recommendation and thanks the Councils for their endorsement.

FINDINGS OF FACT:

The Department finds that the proposed changes as set forth in the November 2013 *Register of Regulations* should be adopted.

THEREFORE, IT IS ORDERED, that the proposed regulation to amend the Division of Social Services Manual (DSSM) regarding the Child Care Subsidy Program, specifically, *Determining High School/GED Eligibility Participation and Determining Post-Secondary Eligibility Participation* is adopted and shall be final effective January 10, 2014.

Rita M. Landgraf, Secretary, DHSS

DSS FINAL ORDER REGULATION #13-56

REVISION:

~~11003.7.5 Income Eligible/Education and Post-Secondary Education~~

~~Parents/caretakers who participate in education and post secondary education can receive income eligible Child Care for the duration of their participation as long as:~~

- ~~A. their participation will lead to completion of high school, a high school equivalent or a GED; or~~
- ~~B. their participation in post secondary education was part of a DSS TANF Employment and Training program; or~~
- ~~C. their participation in post secondary education began while participating in the DSS Food Stamp Employment and Training (FS E and T) program; and~~
- ~~D. there is a reasonable expectation that the course of instruction will lead to a job within a foreseeable time frame, such as nursing students, medical technology students, secretarial or business students.~~

~~DSS will not authorize child care services for parents/caretakers who already have one four year college degree or are in a graduate program.~~

AMENDED:

11003.7.5 Determining High School/GED Eligibility and Participation

45 CFR 98.20

This policy applies to applicants and recipients seeking a high school diploma or GED.

1. DSS Requires Parents/Caretakers Meet Certain Eligibility Criterion

Parents/Caretakers who attend high school or GED program can receive Child Care for the duration of their participation.

A. If parents/caretakers are:

- Attending high school or high school equivalency and have not previously received a high school diploma or GED.
- Meeting all other financial and technical requirements. (See DSSM 11003.9- Financial Requirements and DSSM 11003-Determining Technical Eligibility for Child Care)

NEW:

11003.7.5.1 Determining Post-Secondary Eligibility and Participation

45 CFR 98.20

This policy applies to applicants and recipients who meet Child Care income eligibility requirements.

1. DSS Requires Parents/Caretakers Seeking A Degree Meet Certain Criterion.

Parents/Caretakers who are enrolled in higher education or training programs that lead to a degree or certification/licensure can receive Child Care for the duration of the education program.

A. The parents/caretakers must be participating:

- In a DSS TANF Employment and Training (TANF E & T) Program; or
- In the DSS Food Supplement Program Employment and Training (FS E & T)[;] and

B. DSS expects the course of instruction will lead to employment.

C. Parents/Caretakers who already have a Bachelor's degree or higher are not eligible.

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60; (7 Del.C., Ch. 60)
7 DE Admin. Code 1103

Secretary's Order No.: 2013-A-0040

1103 Ambient Air Quality Standards

Date of Issuance: November 15, 2013

Effective Date of the Amendment: January 11, 2014

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed *revised* regulations to amend 7 **DE Admin. Code** 1103 (Ambient Air Quality Standards), as a result of the Department's exhaustive review of its existing regulations, pursuant to Governor Markell's Executive Order No. 36 (hereinafter referred to as "E.O. 36"). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's aforementioned focused review of its existing regulations under E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the Department's Division of Air Quality ("DAQ") identified 7 **DE Admin. Code** 1103, Ambient Air Quality Standards, as an existing, older regulation which required revision at this time.

Revisions are being proposed at this time to 7 **DE Admin. Code** 1103, Ambient Air Quality Standards, in order to bring the existing regulatory standards up-to-date with current federal requirements. This particular air regulation currently contains outdated test methods and emissions standards. This requires citizens and industry to review both state regulations and federal regulations, and to reconcile the two, in order to understand the requirements that apply here in Delaware. This could also lead to state and federal requirements being incorrectly applied. This unnecessary regulatory burden will be eliminated with the Department's proposed revisions to 7 **DE Admin. Code** 1103. Additionally, the revised regulation will also be submitted to the U.S. Environmental Protection Agency ("EPA") as a revision to Delaware's State Implementation Plan ("SIP").

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2013-16 (E.O.36). The Department published its initial proposed regulation Amendments in the July 1, 2013 *Delaware Register of Regulations*, and held a public hearing on August 1, 2013.

The proposed Amendments were thoroughly vetted by the Department at the aforementioned public hearing on August 1, 2013. Public comment was received by the Department from the regulated community with regard to these proposed amendments, suggesting several edits to the proposed language, which would both correct some typographical errors and provide additional clarity without changing the intent of the proposed amendment. After review, the Department's Division of Air Quality agreed with these suggested revisions, and has now incorporated the same into the proposed *revised* amendments to 7 **DE Admin. Code** 1103. None of the proposed revisions are substantive in nature, and thus no additional vetting of this proposed promulgation is necessary at this time. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 4, 2013 (Report). The Report recommends certain findings and the adoption of the proposed *revised* Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed *revised* Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The adoption of this Order will enable Delaware to update its existing, older air regulations by bringing the regulatory standards up-to-date with current federal requirements and provide additional clarity to both the regulated community and the public at large with respect to these issues.

Moreover, the *revised* amendments to 7 **DE Admin. Code** 1103 will also be submitted to the EPA as a revision to update Delaware's State Implementation Plan.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the initial proposed Amendments, including at the public hearing held on August 1, 2013;
- 3.) The Department held a public hearing on August 1, 2013 in order to consider public comment before making any final decision;

4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The adoption of this Order will enable Delaware to update its existing, older regulations by bringing the regulatory standards up-to-date with current federal requirements and provide additional clarity to both the regulated community and the public at large with respect to these issues. Moreover, the revisions to 7 **DE Admin. Code** 1103 will also be submitted to the EPA as a revision to update Delaware's State Implementation Plan;

6.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) update its existing, older air regulations (as well as its SIP), and provide additional clarity and understanding to Delaware citizens with regard to these matters; (2) further the purpose of Governor Markell's initiatives as set forth in Executive Order No. 36, to wit: strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance; and, lastly, because (3) the amendments are well supported by documents in the record;

7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

1103 Ambient Air Quality Standards

09/11/99 1/11/2014

1.0 General Provisions

(Break in Continuity Within Section)

1.6 The sampling and analytical procedures and techniques employed to determine ambient air concentrations of contaminants shall be consistent with methods which result in a representative evaluation of the prevailing conditions. The following methods shall be used directly or employed as reference standards against which other methods may be calibrated;

1.6.8 Ambient concentrations of lead shall be determined by the reference method in accordance with 40 CFR, Part 50, Appendix G, ~~June 29, 1979. Reference Method for the Determination of Lead in [Total] Suspended Particulate Matter[, August 2, 2013 Collected from Ambient Air, November 12, 2008].~~

(Break in Continuity of Sections)

02/01/1984 1/11/2014

4.0 Sulfur Dioxide

4.1 ~~The Primary Ambient Air Quality Standards for Sulfur Oxides measured as Sulfur Dioxide are as follows:~~

4.1.1 ~~An annual arithmetic average value of 80 µg/m³, (0.03 ppm) not to be exceeded, based upon 24-hour average concentrations. The national primary 1-hour air quality standard for oxides of sulfur is 75 parts per billion (ppb) measured in the ambient air as sulfur dioxide. The 1-hour ambient air quality standard is [met] when the three-[hour year] average of the annual (99th percentile) of the daily maximum 1-hour average concentration is less than or equal to 75 ppb.~~

(Break in Continuity Within Section)

4.3 The national primary annual ambient air quality standard for sulfur oxides of 0.030 parts per million (ppm), annual arithmetic mean, shall not be exceeded.

4.3.1 Compliance with the national annual primary ambient air quality standard for oxides of sulfur is determined in accordance with 40 CFR Part 50, Appendix A-1, Reference Method Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method), June 22, 2010, or 40 CFR, Part 50, Appendix A-2, Reference Method for the Measurement of Sulfur Dioxide in the Atmosphere (Pararosaniline Method), June 22, 2010.

- 4.3.2 The national primary ~~[24-hour annual]~~ ambient air quality standard for sulfur oxides is set forth in 40 CFR Part 50.4, National Primary Ambient Air Quality Standards for Sulfur Oxides (Sulfur Dioxide), June 22, 2010.

(Break in Continuity of Sections)

09/11/1999 1/11/2014

6.0 Ozone

- 6.1 ~~One hour primary and secondary ambient air quality standards for ozone~~
~~The average number of days per calendar year with a maximum one hour average value exceeding 235 $\mu\text{g}/\text{m}^3$ (0.12 ppm) shall be equal to or less than one, averaged over three consecutive years. This standard shall be applicable to New Castle County and Kent County. The 1-hour primary and secondary **[national]** ambient air quality standard for ozone is 235 $\mu\text{g}/\text{m}^3$ (0.12 ppm). The primary and secondary ozone ambient air quality standards are met when the number of days per calendar year with maximum hourly average concentrations above 235 $\mu\text{g}/\text{m}^3$ (0.12 ppm)] is equal to or less than 1, as determined by 40 CFR Part 50, Appendix H, Interpretation of the 1-hour Primary and Secondary National Ambient Air Quality Standards for Ozone, July 18, 1997. The 1-hour primary and secondary national ambient air quality standards are set forth in 40 CFR Part 50.9, National 1-hour Primary and Secondary Ambient Air Quality Standards for Ozone, May 14, 2012.~~
- 6.2 ~~Eight hour primary and secondary ambient air quality standards for ozone~~
~~The average of the fourth highest daily maximum eight hour average ozone concentration is less than or equal to 0.08 ppm, averaged over three consecutive years. This standard applies to all Counties in Delaware. The 8-hour primary and secondary **[national]** ambient air quality standard for ozone is 0.075 parts per million (ppm). The primary and secondary ozone ambient air quality standards are met when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.075 ppb, as determined in accordance with 40 CFR Part 50, Appendix P, Interpretation of the Primary and Secondary Air quality Standards for Ozone, May 27, 2008. The 8-hour primary and secondary ozone standards are set forth in 40 CFR Part 50.15, National Primary and Secondary Air Standards for Ozone, May 27, 2008.~~

*Please note that no additional changes were made to the regulation as originally proposed and published in the July 2013 issue of the *Register* at page 38 (17 DE Reg. 38). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

1103 Ambient Air Quality Standards

DIVISION OF AIR QUALITY

Statutory Authority: 7 **Delaware Code**, Chapter 60; (7 **Del.C.**, Ch. 60)
 7 **DE Admin. Code** 1125

Secretary's Order No.: 2013-A-0059

1125 Requirements for Preconstruction Review

Date of Issuance: December 17, 2013

Effective Date of the Amendment: January 11, 2014

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulations to amend 7 **DE Admin. Code** 1125, Requirements for Preconstruction Review, Section 1.9 (“Definitions”). The Department’s Division of Air Quality commenced the regulatory development process with Start Action Notice 2012-18. The Department published its initial proposed Regulation Amendments in the October 1, 2013 *Delaware Register of Regulations*, and held a public hearing on October 28, 2013. It should be noted that no comment was received by the Department in this matter.

The proposed amendments to 7 **DE Admin. Code** 1125 will enable the Department to revise Section 1.9 of Regulation 1125 to restore language inadvertently removed previously, thus re-establishing the agreement between the Delaware New Source Review (“NSR”) regulation and the federal NSR rule in this regard.

When determining NSR applicability under Section 3.0, “Prevention of Significant Deterioration of Air Quality” for a stationary source modification, the procedure requires comparing projected source pollutant emissions to that pollutant’s significance level shown in the table in Part (a) under the definition of “Significant” in Section 1.9, “Definitions”. The federal NSR Rule, 40 CFR 51.166 (b)(23), has always listed a nitrogen oxides significance level of 40 TPY. In past years, so did the Delaware NSR regulation. The Department has recently discovered that sometime in the early 1990’s, that entry in the Delaware regulation was inadvertently removed.

This proposed action will rectify that omission and restore agreement between the federal and EPA NSR rules. It should be noted that, since Delaware’s air quality is adequately protected through the regulation of NO_x emissions under Section 2.0 of 7 **DE Admin. Code** 1125, this omission has not caused any decrease in air quality.

The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated December 10, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department’s experts developed the record and drafted the proposed Amendments. I find that the Department’s experts in the Division of Air Quality fully developed the record to support adoption of these Amendments. With the adoption of this Order, Delaware will be enabled to revise Section 1.9 of Regulation 1125 to rectify the current omission of the listing of the nitrogen oxides significance level of 40 TPY in the Delaware NSR regulation, thus restoring agreement between the federal and EPA NSR rules

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at the public hearing held on October 28, 2013;
- 3.) The Department held a public hearing on October 28, 2013 in order to consider public comment before making any final decision;
- 4.) The Department’s Hearing Officer’s Report, including its recommended record and the recommended Amendments, as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) revise Section 1.9 of Regulation 1125 to rectify the current omission of the listing of the nitrogen oxides significance level of 40 TPY in the Delaware NSR regulation; (2) restore agreement between the federal and EPA NSR rules; and, lastly, because (3) the amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O’Mara, Secretary

*Please note that no changes were made to the regulation as originally proposed and published in the October 2013 issue of the *Register* at page 408 (17 DE Reg. 408). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

1125 Requirements for Preconstruction Review

DIVISION OF FISH AND WILDLIFE

Statutory Authority: 7 Delaware Code, Sections 102 and 103 (7 **Del.C.** §§102 & §103)
7 **DE Admin. Code** 3900

Secretary's Order No.: 2013-F-0057

3900 Wildlife

Date of Issuance: December 17, 2013

Effective Date of the Amendment: January 11, 2014

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed revised regulations to amend 7 **DE Admin. Code** 3900, *Delaware Regulations Governing Wildlife*. The Department's Division of Fish and Wildlife commenced the regulatory development process with Start Action Notice 2013-21. The Department published its initial proposed regulation Amendments in the August 1, 2013 *Delaware Register of Regulations*, and held a public hearing on September 4, 2013.

The Department proposed its initial amendments to 7 **DE Admin. Code** 3900, *Delaware Regulations Governing Wildlife* at the aforementioned public hearing held on September 4, 2013, to wit: Section 1.0 (Definitions); Section 2.0 (Method of Take); 4.0 (Seasons); 7.0 (Deer); and 23.0 (Non-Native/Invasive Wildlife) to enable DNREC to (1) create a definition for the terms "Cable Restraint", "Foothold Trap", "Jaw Spread", and "Waterline"; (2) require written permission before trapping on private or public property; (3) make it unlawful to set traps near exposed meat to prevent capture of raptors; (4) make it unlawful to tend or disturb another person's traps without their permission; (5) prohibit the use of toothed or serrated jawed foothold traps; (6) define the types and sizes of foothold traps permitted to be set both above and below the waterline; (7) allow the use of foot encapsulating traps; (8) require identification tags on all trap types; (9) set a maximum height in which cable restraints may be set above the ground; (10) establish a fox trapping season; (11) authorize a new method in which hunters can validate a harvested deer; (12) make it unlawful to possess a live coyote or nutria without a permit, establish hunting and trapping seasons for coyotes, and establish a trapping season for nutria; (13) require reporting of harvested coyotes and nutria; (14) make it unlawful to release swine into the wild, require individuals to notify the State if swine escape and cannot be recaptured, and make it illegal to kill feral swine unless authorized by the Division; and (15) make it illegal to recreationally hunt feral swine or charge a fee to hunt feral swine.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 **DE Admin. Code** 3900, *Delaware Regulations Governing Wildlife*, pursuant to 7 **Del.C.** §§102-103, 7 **Del.C.** §§801-802, and 7 **Del.C.**, Chapter 60. A voluminous amount of public comment was received by the Department regarding this proposed promulgation, and the same was thoroughly addressed and responded to by the Division of Fish & Wildlife in its formal Technical Response Memorandum dated December 3, 2013. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report, dated December 10, 2013 ("Report"), which recommends certain findings and the adoption of the proposed *revised* Amendments, as attached to the Report as Appendix A.

Findings and Discussion

The Delaware Division of Fish and Wildlife (Division) is charged by law with the protection, management and conservation of all forms of protected wildlife within the State for all the constituents of Delaware. In July 2012, the General Assembly passed legislation establishing a new Subchapter VIII of Delaware's wildlife code, authorizing the Department to designate and manage non-native wildlife species. 7 **Del.C.** §801 authorizes the Division to establish rules and regulations associated with the management of non-native wildlife species, such as coyotes, nutria and feral hogs. In response to the passage of this statute, the Division has developed a set of proposed regulations amending 7 **DE Admin. Code** 3900, *Delaware Regulations Governing Wildlife*, to address the management of these non-native species. In order to properly manage several of these species, namely, coyotes and nutria, the existing trapping regulations also needed to be revised to accommodate the different trapping techniques and tools used for these species. In doing so, the Division also revised other aspects of the trapping regulations in order to address issues identified by the public as improvements in the science of furbearer management. Additionally, in an effort to add efficiency to the ongoing regulatory process, the Division also included in this proposed regulation package a proposed deer tagging change that it had been considering for some time.

Of note is the fact that 7 **Del.C.** §802 authorizes the Department to issue a Secretary's Order specifying the times and means for which person(s) can take, harvest or capture non-native wildlife species that have the potential to become, as determined by the Department upon appropriate evaluation or investigation, seriously injurious to native wildlife or their habitat or to agriculture, domestic animals, property, or human health or safety. Although this Secretary's Order is not part of this present regulation package, it should be noted that the same is being developed in parallel with the proposed non-native species regulations since it is designed to address aspects of non-native species control beyond those being appropriately considered within the proposed regulation package.

Throughout the regulatory development process regarding this particular promulgation, the Department received a voluminous amount of public comment, as noted in the Report. After the hearing record closed with respect to public comment on September 19, 2013, an exhaustive review of the same was undertaken by the Department's Division of Fish & Wildlife. This comprehensive review subsequently yielded a formal Technical Response Memorandum, dated December 3, 2013, which the Hearing Officer then expressly incorporated into her Report.

The aforementioned Technical Response Memorandum encompassed the full spectrum of comment contained in the record concerning this matter. Each comment was meticulously organized and grouped according to its subject matter, followed by a thorough and rational discussion of the issue based upon the record developed in this promulgation. Following the discussion of each subject matter, the Division of Fish & Wildlife offered its recommendation as to what the position of the Department should be with respect to each issue. In most instances, the Division believed that no changes to the Department's proposed amendments were warranted. There were, however, four specific instances which, in light of the meritorious comment received, the Division has proposed to revise from its initial proposed amendments, in order to provide additional clarity with regard to the original intent of the proposed amendments and improve upon their intent, as well as to accommodate other meritorious suggested changes. It is the Division's position that these proposed *revisions* to the Department's amendments to 7 **DE Admin. Code** 3900 are not substantive in nature, and thus no additional vetting of the proposed regulatory amendments is necessary at this time.

The proposed *revisions* to the Department's initial proposed regulation amendments are as follows:

- (1) **Coyote Hunting Season** -- The Division received numerous comments that the initial proposed coyote hunting season of November 1 through the last day of February should be extended to a longer time period. The Division recognizes the recreational opportunities and benefits of a longer hunting season within our existing hunting season framework, and is proposing the following modification to 23.1.1.3 Non-Native Wildlife to extend the coyote hunting season by an additional two months, as follows:

23.1.1.3 Hunting Season. Coyotes may be hunted and harvested from **September 1** through the last day of February.

- (2) **Relaxing lock definition** -- The Division received numerous comments suggesting a definition was needed for a "relaxing lock" in associated with the use of cable restraints. The Division agrees a definition within the regulation itself will provide clarity on the use of these trapping devices, and is therefore proposing the following definition be added to 1.0 Definitions:

"Relaxing Lock" shall mean a device installed on a cable restraint that allows the loop to release constriction pressure on the captured animal when the cable is not taut and the animal stops pulling.

- (3) **Use of exposed meat as bait in box traps** -- The Division's initial proposed regulations would establish that it shall be unlawful to bait a trap with meat or animal product visible from above and within 10 feet of a trap in an effort to minimize the chance of capturing raptors or vultures that can be inadvertently captured when they attempt to consume the bait. This regulation was directed towards foothold traps and cable restraints and several commenters asked if this prohibition of exposed bait near a trap would apply to box traps. Because the capture of raptors or vultures within a box trap is very unlikely, and because the intent of the regulation was for foothold traps and cable restraints, the Division is proposing the following modification to 2.1.10 Method of Take to provide clarity on its intent:

2.1.10 It shall be unlawful to bait a trap with meat or animal products, except box/cage traps, if the bait is visible from above and within 10 feet of the trap. The use of animal fur or feathers without any attached animal tissues is not restricted.

- (4) **Use of laminated jawed traps** -- The Division's initial proposed regulations would establish that all foothold traps set above the waterline must be have padded or offset jaws, in an effort to improve capture effectiveness and efficiency and reduce animal injury. Several commenters asked if laminated jaw traps would be permitted, as they function similarly to padded jaw traps by increasing the surface area of the trap jaw on a trapped animal's foot, thereby improving capture effectiveness and efficiency while reducing animal injury. Because the use of laminated jaw traps would be consistent with the intent of the regulation (increased capture efficiency and humanness), the Division is proposing the following modification to 2.4.1 Foothold Traps to include laminated jaws as an acceptable foothold above the waterline:

2.4.1 Notwithstanding statutes § 703 and 788 of Title 7, It shall be unlawful for any person to set a leghold foothold trap at any time in this State, except from December 1 through March 10 (March 20 on embanked meadows) in New Castle County and December 15 through March 15 in Kent and Sussex counties. The use of toothed or serrated jawed traps is prohibited. All foothold traps set above the waterline must have padded, laminated or offset jaws, with the exception being that coil-spring traps with a jaw spread of 4 inches or less and long-spring traps with a jaw spread of 4 ½ inches or less do not need to be padded, laminated or have offset jaws.

I find that the Department's experts in the Division of Fish and Wildlife fully developed the record to support adoption of these *revised* Amendments. I find that the *revised* proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. I also find that the proposed *revisions* to the Department's amendments to 7 **DE Admin. Code** 3900 are not substantive in nature, and thus no additional vetting of these proposed regulatory amendments is necessary at this time.

With the adoption of this Order, Delaware will be enabled to properly address the management of non-native wildlife species such as coyotes, nutria, and feral swine. The revisions to existing trapping regulations will accommodate the different trapping techniques and tools used for management of these non-native species. Again, additional revisions to various aspects of Delaware's trapping regulations have also been made at this time to address issues identified by the public as improvements in the science of furbearer management. Lastly, revisions to Delaware's existing deer tagging procedure (which had been under consideration for some time) were also included in this present promulgation, and thus the adoption of this Order will aid in the Department's ongoing initiative to increase its efficiency agency wide.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these *revised* proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the same, including at the public hearing held on September 4, 2013;
- 3.) The Department held a public hearing on September 4, 2013 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments as set forth in Appendix A, and the Technical Response Memorandum as set forth in Appendix B, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) properly address the management of non-native wildlife species such as coyotes, nutria, and feral swine; (2) accommodate the different trapping techniques and tools used for management of these non-native species; (3) address issues identified by the public as improvements in the science of furbearer management; (4) promulgate revisions to Delaware's existing deer tagging procedure (which had been under consideration for some time); (5) further the Department's ongoing initiative to increase its regulatory efficiency agency wide; and, lastly, because (6) the *revised* amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

3900 Wildlife

1.0 Definitions

(Break in Continuity Within Section)

["Relaxing Lock" shall mean a device installed on a cable restraint that allows the loop to release constriction pressure on the captured animal when the cable is not taut and the animal stops pulling.]

2.0 Method of Take

(Penalty Section 7 Del.C. §103(d))

(Break in Continuity Within Section)

2.1.10 **It shall be unlawful to bait a trap with meat or animal products[, except box/cage traps,] if the bait is visible from above and within 10 feet of the trap. The use of animal fur or feathers without any attached animal tissue is not restricted.**

(Break in Continuity Within Section)

2.4 ~~Leghold~~ Foothold Traps.

2.4.1 ~~Notwithstanding statutes § 703 and 788 of Title 7, it shall be unlawful for any person to set a leghold-foothold trap at any time in this State, except from December 1 through March 40 20 (March 20 on embanked meadows) in New Castle County and December 15 through March 15 in Kent and Sussex counties. The use of toothed or serrated jawed traps is prohibited. All foothold traps set above the waterline must have padded[, laminated] or offset jaws, with the exception being that coil-spring traps with a jaw spread of 4 inches or less and long-spring traps with a jaw spread of 4 ½ inches or less do not need to be padded[, laminated] or have offset jaws.~~

(Break in Continuity of Sections)

23.0 Non-native/Invasive Wildlife

(Penalty Section 7 Del.C. §103(d))

23.1 Non-native Wildlife23.1.1 Coyotes

23.1.1.1 It shall be unlawful to possess, buy, sell, barter, trade, or transfer any live coyote to or from another person unless permitted by the Director of the Division of Fish and Wildlife.

23.1.1.2 Coyotes may be killed or trapped in accordance with the regulations found within this Section with the following: longbow, crossbow, shotgun, rimfire rifle or centerfire rifle up to .25 caliber, a muzzle-loading rifle, foothold trap, cable restraint, or box trap. Notwithstanding the foregoing, coyotes may be killed in accordance with § 802 of Title 7.

23.1.1.2.1 Notwithstanding subsection 23.1.1.2 of this section, during any deer firearms season, it shall be unlawful to hunt coyotes with any firearm that is not also legal for deer hunting.

23.1.1.3 Hunting Season. Coyotes may be hunted and harvested from ~~November~~ September] 1 through the last day of February.

*Please note that no additional changes were made to the regulation as originally proposed and published in the August 2013 issue of the *Register* at page 238 (17 DE Reg. 238). Therefore, the final regulation is not being republished here in its entirety. A copy of the final regulation is available at:

3900 Wildlife

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES

Statutory Authority: 7 Delaware Code, Chapter 74A; (7 Del.C., Ch. 74A)
7 DE Admin. Code 1352

Secretary's Order No.: 2013-WH-0051

1352 Aboveground Storage Tanks

Date of Issuance: November 15, 2013

Effective Date of the Amendment: January 11, 2014

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers proposed regulations to amend 7 DE Admin. Code 1352, *Regulations Governing Aboveground Storage Tanks* ("AST Regulations"), as a result of the Department's exhaustive review of its existing regulations, pursuant to Governor Markell's Executive Order No. 36 (hereinafter referred to as "E.O. 36"). In June of 2012, Governor Markell issued E.O. 36, which directed all state agencies, including DNREC, to perform a focused review of their existing, older regulations, identify and remove regulatory hurdles, and modernize and streamline any regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance.

Among the considerations of the Department's aforementioned focused review of its existing regulations under E.O. 36 was to ensure that the same continued to serve the original purpose for which they were adopted, and to provide for improvements. To that end, the Department's Division of Waste and Hazardous Substances, Tank Management Section, identified 7 DE Admin. Code 1352 as an existing, older regulation which required revision at this time.

The Regulations Governing Aboveground Storage Tanks (hereinafter referred to as "AST Regulations") were created under the authority of the Jeffrey Davis Aboveground Storage Tank Act, Title 7, Del.C., Chapter 74A, in 2004. These AST Regulations were last updated in 2005. In response to E.O. 36, the Department has identified three modifications to be made to Delaware's existing AST Regulations:

- Part A, Section 4.6.3. has been modified to extend the required time frame for notification to the Department for a Retrofit or Upgrade from sixty (60) days to one (1) year.
- Part A, Section 5.3. has been modified to require a specific time frame in which the Department must respond to a request for alternative technology approval. Currently, there is no time frame in which DNREC must respond. The proposed change requires the Department to provide a written response within ninety (90) days of receiving a request.
- Part B, Section 1.7 has been modified to allow an Owner or Operator to request a one year extension of the Department's approval for an installation of a new AST.

The Department's Division of Waste and Hazardous Substances commenced the regulatory development process with Start Action Notice 2013-12 (E.O.36). The Department published its initial proposed regulation Amendments in the July 1, 2013 Delaware *Register of Regulations*, and held a public hearing on August 6, 2013.

The proposed Amendments were thoroughly vetted by the Department at the aforementioned public hearing on August 6, 2013. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the public hearing, for the purpose of receiving additional public comment. With the exception of a few clarifying questions from members of the public made at the time of the aforementioned public hearing, no other public comment was received by the Department during the course of this proposed promulgation. It should also be noted that all proper notification and noticing requirements concerning this proposed promulgation were met by the Department. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated November 4, 2013 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendments. As previously noted, no public comment was received by the Department from the public at any time during the course of this proposed promulgation.

I find that the Department's experts in the Division of Waste and Hazardous Substances fully developed the record to support adoption of these Amendments. The adoption of this Order will enable Delaware to update its existing, older regulation, thereby allowing the Department to (1) extend the timeframe from 60 days to one year with regard to the need for work to commence subsequent to the Department receiving its initial notification; (2) provide better customer service to those who submit alternative technology requests to the Department with regard to aboveground storage tanks by placing a 90 day response requirement on DNREC for the same; and (3) alleviate unnecessary duplication in the submittal process with regard to installation plans for AST matters

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed amendments as final;
- 2.) The Department provided adequate public notice of the proposed amendments, and provided the public with an adequate opportunity to comment on the initial proposed amendments, including at the public hearing held on August 6, 2013;
- 3.) The Department held a public hearing on August 6, 2013 in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;
- 5.) The adoption of this Order will enable Delaware to update its existing, older AST Regulations by allowing the Department to (1) extend the timeframe from 60 days to one year with regard to the need for work to commence subsequent to the Department receiving its initial notification; (2) provide better customer service to those who submit alternative technology requests to the Department with regard to aboveground storage tanks by placing a 90 day response requirement on DNREC for the same; and (3) alleviate unnecessary duplication in the submittal process with regard to installation plans for AST matters;
- 6.) The recommended amendments should be adopted as final regulation amendments because Delaware will be able to (1) update its existing, older AST Regulations, and provide additional clarity and understanding to Delaware citizens with regard to these matters; (2) further the purpose of Governor Markell's initiatives as set forth

in Executive Order No. 36, to wit: strengthen Delaware's economy by modernizing and streamlining regulations that may be outdated or unnecessarily burdensome, while maintaining the state's commitment to improving public health and environmental performance; and, lastly, because (3) the amendments are well supported by documents in the record;

7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

***Please note that no changes were made to the regulation as originally proposed and published in the July 2013 issue of the *Register* at page 59 (17 DE Reg. 59). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

1352 Aboveground Storage Tanks

DIVISION OF WATER

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C., Ch. 60)
7 DE Admin. Code 7101

Secretary's Order No.: 2013-W-0060

7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems

Date of Issuance: December 17, 2013

Effective Date of the Amendment: January 11, 2014

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

The regulatory changes that will be implemented through this Order represent the culmination of more than five years of work that include multiple discussions with stakeholders, including the real estate industry, representatives of private and public utilities that operate wastewater treatment systems, environmental advocacy organizations, and legislators. These *revised* regulations are responsive to the concerns that have been raised in these discussions and through the public hearing process, and largely mimic the regulations governing on-site wastewater systems that have been working effectively for the past four years in the Inland Bays watershed. While public opposition to the first draft of proposed changes was significant at the May 2012 hearing, there was minimal public comment in opposition to the regulations in response to the third and current version of the proposed *revised* regulation. Additional comments requested that the portion of the regulation affecting systems within 1000 feet of the tidal portions of the Nanticoke and Broad Creek be omitted, but as they do not become effective until January 2015, we believe sufficient time is available to allow regulated parties and the wastewater management industry to prepare for implementation of the new requirements. Comments also raised concerns about economic impacts. The Department has developed a number of financial assistance programs to help homeowners replace failing systems that often threaten drinking water. These programs include an option that would allow an owner to not pay back a loan until such time as the property is sold. These *revised* regulation amendments combined with available financial assistance programs appropriately balance economic considerations and environmental protection, and will help Delaware achieve its goals of obtaining water quality standards that protect public health and aquatic life.

Background and Procedural History

This Order considers proposed *revised* regulations to amend 7 DE Admin. Code 7101, Delaware Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems. The

Department's Division of Water, Groundwater Discharges Section, commenced the regulatory development process with Start Action Notice 2008-29. The Department published its initial proposed regulation Amendments in the April 1, 2012 *Delaware Register of Regulations*, and over the course of this particular proposed promulgation, held three public hearings, to wit: May 3, 2012, November 15, 2012, and most recently November 21, 2013. After an exhaustive review of the comment that was received after each hearing, the Department *revised* its initial proposed regulation amendments, to add further clarity to the proposed regulatory language and, in some instances, incorporate meritorious suggestions from the public and regulated community into its final draft. The *revised* proposed regulation amendments were published in the November 1, 2013 *Delaware Register of Regulations*, prior to the time of the third and final public hearing held in this matter on November 21, 2013.

It should be noted that, following the second public hearing held on November 15, 2012 as noted above, and, upon review of the comments having been received to date at that time, the Department recognized that a significant level of confusion was present with respect to the intent of these proposed regulation amendments, and, in some instances, substantial public concern regarding the same, due in part to certain misinformation existent within the public sector at that time about this proposed promulgation. Thus, during the majority of 2013, an extensive outreach was begun by the Department to correct erroneous beliefs regarding the intent of these proposed regulatory amendments. During that time, numerous stakeholder meetings and informative workshop sessions were held throughout the State of Delaware to clarify the actual intent of these proposed regulation amendments, and to correct the aforementioned misunderstandings that had become prevalent with regard to certain aspects of this promulgation. At these meetings, the Department concentrated on the following concerns, as set forth in the public comment received to date in this matter: (1) Inspection of all septic systems upon property transfer; (2) requirements to upgrade all new and replacement septic systems within 1,000 feet of Chesapeake Bay Watershed tidal waters (i.e., Nanticoke River and Broad Creek); (3) large system treatment performance standards for nitrogen and phosphorus; and (4) inconsistencies between performance standards for spray irrigation versus other groundwater discharges (i.e., spray less stringent).

As a result of these numerous meetings held throughout 2013, the Department received additional public input, and again *revised* the proposed regulation amendments, as noted above. These revisions were made by DNREC to enhance clarity in some areas of the proposed language, and also to incorporate meritorious comment received from both the public and the regulated community. In the beginning of October, a formal press release was issued by the Department, announcing that DNREC's Ground Water Discharges Section would hold another public workshop Monday, October 14, 2013 in Georgetown, Delaware regarding the *revised* proposed amendments. This press release confirmed that these proposed amendments for residential and large septic systems included the following matters: soil investigations; hydrogeological investigations; design considerations; and operation and maintenance practices.

On-site industry licensees, wastewater utility representatives, environmental consultants, and the public were all encouraged to attend the October 14, 2013 workshop, and all were invited to send written comments, both before the workshop and at any time throughout the regulatory process by emailing John Hayes, Environmental Scientist, DNREC Division of Water's Ground Water Discharges Section. The aforementioned press release further noted that the proposed revisions to these regulation amendments would be discussed during the workshop, and public feedback was welcomed by the Department. The public was also once again encouraged to send written comments at any time throughout the regulatory process. Furthermore, the press release reminded the public that all proposed changes to the Regulations Governing the Design, Installation and Operation of On-site Wastewater Treatment and Disposal Systems, the revised exhibits contained with the formal hearing record, and all additional information concerning this matter were posted on DNREC's website for public review.

On November 21, 2013, a third public hearing was held once again by the Department at the Richardson & Robbins Building Auditorium located at 89 Kings Highway, Dover, Delaware. Approximately 27 people attended the hearing that night, and many provided comment on the *revised* regulatory amendments. The record was left open for receipt of additional public comment through close of business on Friday, December 6, 2013. After the comment period formally closed, the Department's GWDS reviewed the hearing transcript and all comments received, and then prepared its supplemental Technical Response Memorandum, dated December 12, 2013, which addressed all concerns raised at this most recent hearing. As a result of the tremendous efforts of Department staff as detailed above, it should be noted that there were minimal negative comments received by DNREC at the third and final hearing.

The Department has the statutory basis and legal authority to act with regard to the proposed amendments to 7 DE Admin. Code 7101, Delaware Regulations Governing the Design, Installation and Operation of On-Site

Wastewater Treatment and Disposal Systems, pursuant to 7 **Del.C.**, Chapter 60. Again, a voluminous amount of public comment was received by the Department throughout this promulgation process, and the same was thoroughly addressed and responded to by the Division of Water in its Technical Response Memorandum dated December 6, 2013. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report, dated December 13, 2013 ("Report"), which recommends certain findings and the adoption of the proposed *revised* Amendments, as attached to the Report as Appendix A.

Findings and Discussion

As noted above, this particular promulgation has been ongoing with the Department since 2008. Throughout the regulatory development process regarding this particular promulgation, including, but certainly not limited to, numerous meetings with stakeholders, legislators, the regulated community and the public in general, along with three formal public hearings in 18 months, the Department received a voluminous amount of public comment, as noted in the Report. After the hearing record closed with respect to public comment on December 6, 2013, a thorough review of the same was undertaken by the Department's Division of Water. This comprehensive review subsequently yielded a formal Technical Response Memorandum, dated December 12, 2013, which the Hearing Officer then expressly incorporated into her Report. The aforementioned Technical Response Memorandum encompassed a summary of the public comment contained in the record concerning this matter, organized and grouped according to its subject matter, followed by a thorough and rational discussion of the issue based upon the record developed in this promulgation. Following the discussion of each subject matter, the Division of Water offered its recommendation as to what the position of the Department should be with respect to each issue.

I find that the Department's experts in the Division of Water fully developed the record to support adoption of these *revised* Amendments. I find that the revised proposed Amendments are well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. I also find that the most recent proposed *revisions* to the Department's amendments to 7 **DE Admin. Code** 7101, Delaware Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems, are not substantive in nature, and thus no additional vetting of these proposed *revised* regulatory amendments is necessary at this time.

With the adoption of this Order, Delaware will be enabled to properly address the management of large system site investigations, hydrogeological investigations, design considerations, operation and maintenance practices, facilitate the updating of individual on-site wastewater treatment and disposal system design criteria, establish new licensees and inspection protocols, and establish performance standards for small on-site systems utilizing alternative technologies and all large systems.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these *revised* proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendments, and provided the public with an adequate opportunity to comment on the same, including at each of the three public hearings held on May 3, 2012, November 15, 2012, and most recently on November 21, 2013;
- 3.) The Department held all of its aforementioned public hearings, including its most recent on November 21, 2013, in order to consider all public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended *revised* Amendments as set forth in Appendix A, and the Technical Response Memorandum dated December 12, 2013, as set forth in Appendix B, are adopted to provide additional reasons and findings for this Order;
- 5.) The recommended *revised* Amendments should be adopted as final regulation Amendments because Delaware will be able to (1) properly address the management of large system site investigations, hydrogeological investigations, design considerations, operation and maintenance practices; (2) facilitate the updating of individual on-site wastewater treatment and disposal system design criteria; (3) establish new licensees and inspection protocols; (4) establish performance standards for small on-site systems utilizing alternative technologies and all large systems; and, lastly, because (6) the *revised* amendments are well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

*Please note that no changes were made to the regulation as originally proposed and published in the November 2013 issue of the *Register* at page 488 (17 DE Reg. 488). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:

7101 Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems

DEPARTMENT OF STATE

DIVISION OF PROFESSIONAL REGULATION

Statutory Authority: 24 Delaware Code, Section 3006(1) (24 Del.C. §3006(1))
24 DE Admin. Code 3000

ORDER

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

NATURE AND STAGE OF THE PROCEEDINGS

On October 1, 2013, the Delaware Board of Mental Health and Chemical Dependency Professionals published proposed changes to its regulations in the *Delaware Register of Regulations*, Volume 17, Issue 4. This notice further indicated that written comments would be accepted by the Board for thirty days, a public hearing would be held, and written comments would be accepted for fifteen days thereafter. After due notice in the *Register of Regulations* and two Delaware newspapers, a public hearing was held on October 23, 2013 at a regularly scheduled meeting of the Delaware Board of Mental Health and Chemical Dependency Professionals to receive verbal comments regarding the Board's proposed amendments to its regulations.

SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

At the time of the deliberations, the Board considered the following documents:

Board Exhibit 1 – Affidavit of publication of the public hearing notice in the *News Journal*; and

Board Exhibit 2 – Affidavit of publication of the public hearing notice in the *Delaware State News*.

There was no verbal testimony given at the public hearing on October 23, 2013. No written comments were received by the Board during the initial thirty day public comment period; nor were any written comments received after the public hearing during the fifteen day 29 Del.C. §10118(a) second public comment period.

FINDINGS OF FACT AND CONCLUSIONS

1. The public was given notice and an opportunity to provide the Board with comments in writing and by testimony at the public hearing on the proposed amendments to the Board's regulations.

2. There were no public comments provided to the Board during the two written public comment periods, or the public hearing.

3. Pursuant to 24 Del.C. §3006(a)(1), the Board has statutory authority to promulgate rules and regulations clarifying specific statutory sections of its statute.

4. The proposed changes remove references to paper licensure renewal forms, clarify that license renewal is conducted on-line, alter the permitted time period for inactive status, modify and clarify the requirements for supervised counseling experience and modify and clarify the requirements for continuing education so that the continuing education requirements for all professions are consistent with one another.

5. Having received no public comments, the Board finds no reason to amend the regulations as proposed.

DECISION AND EFFECTIVE DATE

The Board hereby adopts the changes to its rules and regulations as proposed, to be effective 10 days

following publication of this order in the *Register of Regulations*. The new regulations are attached hereto as Exhibit A.

SO ORDERED this 10th day of December, 2013.

BY THE DELAWARE BOARD OF MENTAL HEALTH AND CHEMICAL DEPENDENCY PROFESSIONALS

Lisa Ritchie, LCDP (President)	Dr. Greg Drevno, LPCMH
Daniel Cooper, LPCMH (Vice President)	Dr. Tracey Frazier, LCDP
Ruth Banta (Secretary)	Joan McDonough
Irvin Bowers	Dr. Julius Mullen, LPCMH
Daniel Cherneski, LMFT	Dr. William Northey, Jr., LMFT
Mary Davis, LCDP	Elizabeth Vassas

***Please note that no changes were made to the regulation as originally proposed and published in the October 2013 issue of the *Register* at page 410 (17 DE Reg. 410). Therefore, the final regulation is not being republished. A copy of the final regulation is available at:**

3000 Board of Professional Counselors of Mental Health and Chemical Dependency Professionals

DEPARTMENT OF TRANSPORTATION

DIVISION OF TRANSPORTATION SOLUTIONS

Statutory Authority: 21 Delaware Code, Section 4504 (21 Del.C. §4504)
2 DE Admin. Code 2405

ORDER

2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual

Under Title 21 of the Delaware Code, Section 4504, the Delaware Department of Transportation (DelDOT) sought to adopt a revised version of the Oversized/Overweight Hauling Permit Policy and Procedures Manual. This revision of the Oversized/Overweight Hauling Permit Policy and Procedures Manual will supersede any previous versions.

The Department accepted written comments on the draft changes to the Oversized/Overweight Hauling Permit Policy and Procedures Manual from August 1, 2013 to August 31, 2013. Copies of the Draft Oversized/Overweight Hauling Permit Policy and Procedures Manual were obtained by reviewing or downloading a PDF copy from the monthly Register of Regulations website.

Summary of the Evidence and Information Submitted

Five people submitted comments regarding these proposed changes to the Oversized/Overweight Hauling Permit Policy and Procedures Manual. In addition, the Department staff determined that certain other changes, non-substantive in nature, should also be made to the Draft.

The table accompanying this Order summarizes the official public comments that were submitted to DelDOT based on the Draft Oversized/Overweight Hauling Permit Policy and Procedures Manual proposed regulation in the August 2013 edition of the Delaware Register. Each of these suggested changes are listed in the table below, along with the proposed action taken by DelDOT.

Findings of Fact

Based on the record in the docket, I made the following findings of fact:

1. The proposed amendments to the Oversized/Overweight Hauling Permit Policy and Procedures Manual are useful and proper, as amended pursuant to the comment period process under the Administrative Procedures Act.
2. The adoption of these proposed changes to the Oversized/Overweight Hauling Permit Policy and

Procedures Manual is in the best interests of the State of Delaware.

Decision and Effective Date

Based on the provisions of Delaware law and the record in this docket, I hereby adopt the amended Oversized/Overweight Hauling Permit Policy and Procedures Manual, as set forth in the version attached hereto, to be effective on January 1, 2014.

IT IS SO ORDERED this 1st day of December, 2013.

Shailen Bhatt, Secretary
Delaware Department of Transportation

The following table summarizes the official public comments that were submitted to DeIDOT based on the Draft Oversized/Overweight Hauling Permit Policy and Procedures Manual being posted as a proposed regulation in the August 2013 edition of the Delaware Register. During that 30-day public comment period, five people submitted comments. Each of their suggestions are listed below, along with the proposed action taken by DeIDOT.

Page	Sec/Fig	Para.	Public Comment	Response
8 to 14	3.2	-	I think the biggest desire would be to see weekend travel capability.	Time of Travel was added for each load code to accommodate weekend movement. Justification: DeIDOT agrees with the change to provide harmonization within the region.
10	3.2.1.10	3.2.1.10.5	Bring back the 150 trip yearly permit and keep the new 60 trips in a 90 calendar day permit period and let the motor carriers purchasing the permits decide which is best for them.	<i>Sixty (60) trips in a 1 year period.</i> Justification: DeIDOT agrees with the change to allow motor carriers purchasing the permits decide what is best for them.
10	3.2.1.11	3.2.1.11.5	Our neighbor states of Maryland and Virginia have blanket permits which can be purchased one time for the year. Can we begin this in Delaware?	No revision required Justification: DeIDOT will consider this comment for future implementation.
10	3.2.1.11	3.2.1.11.5	We would like to suggest monthly or yearly blanket permits for legal weight but up to 12' wide loads.	No revision required Justification: DeIDOT will consider this comment for future implementation.
14	3.3	3.3.1	Maryland now allows permits to be on smartphones instead of paper permits. Is this something that would be considered?	No revision required Justification: DeIDOT will consider this comment for future implementation. The implementation requires development of a plan to allow electronic display.
19	4.6	4.6.1.3 and 4.6.1.12	Would it be possible to change the need of an escort in the state of Delaware to be from 12' to 13' wide?	One (1) escort vehicle is required for vehicles and loads more than thirteen (13) feet in width but not exceeding fourteen (14) feet. Justification: DeIDOT agrees with the change to provide harmonization within the region.

In addition to the official comments received, DeIDOT also made a number of additional changes to the Draft version of the Oversized/Overweight Hauling Permit Policy and Procedures Manual in the period since it was posted on the Delaware Register. Many of the changes were editorial, or were corrections of errors that were discovered during the internal review process. Each modification, along with the justification for the change, is listed below:

Page	Sec/Fig	Para.	DeIDOT Comment / Proposed Change	Modification

FINAL REGULATIONS

8	3.1	3.1.3	Farm tractors and other implements of husbandry being moved or transported by a manufacturer, dealer, business, or commercial transport company would not be considered transported by a farmer engaged in their agricultural related practices, therefore, a hauling permit is required.	Text was modified accordingly. Justification: Typographical clarification	error/
9	3.2.1.5	3.2.1.5.1	GVW of 100,000 pounds	Text was modified accordingly. Justification: Typographical clarification	error/
9	3.2.1.5	3.2.1.5.4	Duration - Five (5) days	Text was modified accordingly. Justification: Typographical clarification	error/
10	3.2.1.9	3.2.1.9.4	Duration - One (1) Single trip in a Five (5) calendar day period.	Text was modified accordingly. Justification: Typographical clarification	error/
10	3.2.1.10	3.2.1.10.1	1 year period	Text was modified accordingly. Justification: Typographical clarification	error/
11	3.2.1.10	3.2.1.10.4	Duration – Sixty (60) trips in a 1 year period.	Text was modified accordingly. Justification: Typographical clarification	error/
11	3.2.1.11.2	3.2.1.11.2.2.1	Self-propelled cranes with an annual blanket permit may move 24 hours a day. Monday-Sunday except during restricted Holiday periods.	Text was modified accordingly. Justification: Typographical clarification	error/
11	3.2.1.11.2	3.2.1.11.2.2.2	Self-propelled cranes with an annual blanket permit moving at night will have warning lights in accordance with Part 4 – Provisional Permit Requirements of the DelDOT OSOW Hauling Permit Policy and Procedures Manual.	Text was modified accordingly. Justification: Typographical clarification	error/
11	3.2.1.11.2	3.2.1.11.2.2.3	During Holiday restricted periods movement of self-propelled cranes with Blanket Permits must follow procedures stated in Part 6 – Extreme Emergency Permit Procedures.	Text was modified accordingly. Justification: Typographical clarification	error/
11	3.2.1.11.2	3.2.1.11.2.2.4	Remove	Text was modified accordingly. Justification: Duplication	
13	3.3.1.11	3.2.1.11.9	Blanket permit applications will be processed within two (2) weeks of submission of all required documents. Application packets are only required for permit renewals if any changes, specifically with GVW or individual axle weights, differ from previous permit.	Text was modified accordingly. Justification: Typographical clarification	error/
14	3.2	3.2.1	'Click' on Don't have an online account? Register now link located beneath the Login box to self register.	Text was modified accordingly. Justification: Typographical clarification	error/

15	3.2	3.2.2	NOTE: Walk-n customer to the Dover Office must complete and accurate information to process the permit application. An OSOW permit application with instructions can be downloaded and printed using the Forms link on the OSOW Permit System web site www.osow.deldot.gov	Text was inserted. Justification: Clarification
16	3.5	3.5.3	On a Validated (Purchased) permit the expiration date may be extended 3 days due to a breakdown of the piece of equipment.	Text was inserted. Justification: Clarification
17	4.2	4.2.1	Permitted vehicles may move during the permit Effective and Expiration Dates as indicated below unless otherwise authorized or prohibited by other requirements in this section.	Text was modified accordingly. Justification: Typographical error/ clarification
17	4.2	4.2.1.1 4.2.1.12	to Load Code 1 Oversized – Monday through Sunday sunrise to sunset Load Code 2 Overweight – Monday through Sunday sunrise to sunset. Load Code 3 Superload – Refer to PART 5, specifically 5.3 Load Code 4 Manufactured Housing - Monday through Sunday sunrise to sunset Load Code 5 Sealed Container - Monday through Sunday 24 hour continuous movement. Load Code 6 Ship - Monday through Sunday 24 hour continuous movement. Load Code 7 Pole & Piling - Monday through Sunday 24 hour continuous movement. Load Code 9 Single Trip Interstate - Monday through Sunday 24 hour continuous movement. Movement is exempt from holiday restriction periods. Load Code 10 Multi Trip Interstate - Monday through Sunday 24 hour continuous movement. Movement is exempt from holiday restriction periods. Load Code 11 Annual Crane - Monday through Sunday 24 hour continuous movement. Movement during holiday restriction periods must follow emergency procedures in PART 6 of this manual. Load Code 12 Twin Trailer - Monday through Sunday 24 hour continuous movement.	Text was inserted. Justification: Clarification
17	4.2	4.2.2	Haulers requesting night movement must set the After Hour Move box on the permit application and enter “Request night movement of envelope vehicle/load” in the Comments section of the online permit application.	Text was inserted. Justification: Clarification

18	4.2	4.2.4	Due to the amount of highway traffic on holidays, vehicles and loads requiring oversize and/or overweight permits shall be prohibited from traveling on those days. Prohibited holidays include New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving, and Christmas. Movement of such vehicles and loads may also be prohibited on any other days or hours when such movements may substantially affect the safety of the motoring public. For specific movement days and times refer to the Holiday Restrictions link on the DeIDOT OSOW Permit System www.osow.deldot.gov	Text was inserted. Justification: Clarification
19	4.6.1	4.6.1.5	Vehicles and loads more than ninety (90) feet or more in overall length are required to have one (1) rear escort vehicle.	Text was inserted. Justification: DeIDOT agrees with the change to provide harmonization within the region.
20	Table 4.1	4.6.1.12	Over 90 feet	Text was inserted. Justification: DeIDOT agrees with the change to provide harmonization within the region.
20	Table 4.1	4.6.1.12	Width over 13 feet	Text was inserted. Justification: DeIDOT agrees with the change to provide harmonization within the region.
26	5.3.1	5.3.1.3	Times of Travel - Type 1 superload moves will be authorized to move from sunrise to sunset Monday – Sunday during the period between the permit Effective and Expiration Dates.	Text was inserted. Justification: Clarification
27	5.3.2	5.3.2.3	Times of Travel - Type 2 superload moves will be authorized to move from sunrise to sunset Monday – Sunday during the period between the permit Effective and Expiration Dates. Movement should be avoided from 6:00AM through 9:00AM and 3:00PM through 7:00PM.	Text was inserted. Justification: Clarification
28	5.3.3	5.3.3.3	Times of Travel - Type 3 superload moves will be authorized to move from sunrise to sunset Monday – Sunday during the period between the permit Effective and Expiration Dates. Movement should be avoided from 6:00AM through 9:00AM and 3:00PM through 7:00PM.	Text was inserted. Justification: Clarification

29	5.3.4	5.3.4.3	Times of Travel - Type 3 superload moves will be authorized to move from sunrise to sunset Monday – Sunday during the period between the permit Effective and Expiration Dates as long as they can maintain a continuous travel speed greater than or equal to 10 miles per hour below the posted speed limit. If the continuous travel speed is less than 10 miles per hour below the posted speed limit, superload moves should avoid moving from 6:00 AM through 9:00 AM and 3:00 PM through 7:00 PM Monday – Friday.	Text was inserted. Justification: Clarification
30	5.3.5	5.3.5.4	Times of Travel - Type 5 superload moves will be authorized to move from sunrise to sunset Monday – Sunday during the period between the permit Effective and Expiration Dates but shall adhere to all additional requirements set forth in this section. Movement should be avoided from 6:00 AM through 9:00 AM and 3:00 PM through 7:00 PM Monday – Friday.	Text was inserted. Justification: Clarification
30	5.3.5.4	5.3.5.4.1	DelDOT reserves the right to restrict moves within this time period on a case-by-case basis in order to minimize impacts to the traveling public and to ensure public safety.	Text was modified accordingly. Justification: Duplication
31	5.3.5.5	5.3.5.5.4	The holiday and event restriction schedule can be found in Table 5.1 below.	Text was inserted. Justification: Clarification

***Please Note: Due to the size of the final regulation, it is not being published here. A copy of the regulation is available at:**

[2405 Oversize/Overweight Hauling Permit Policy and Procedures Manual](#)

GENERAL NOTICES

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF AIR QUALITY

Statutory Authority: 7 Delaware Code, Chapter 60 (7 Del.C. Ch. 60)

Secretary's Order No.: 2013-A-0058

RE: Approving Final Revision to Delaware's State Implementation Plan (SIP), to wit: *Inspection and Maintenance (I/M) concerning Section 11(e) – Program Compliance with 7 DE Admin. Code 1131*

Date of Issuance: December 17, 2013

Effective Date of the Amendment: January 11, 2014

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the *Inspection and Maintenance (I/M) concerning Section 11(e) – Program Compliance with 7 DE Admin. Code 1131*. The purpose of the proposed amendment is to change the methodology by which compliance with existing 7 DE Admin. Code 1131 is monitored by the Department.

Delaware has a vehicle emission inspection program known as "Regulation 1131: Inspection and Maintenance", found at 7 DE Admin. Code 1131. This program requires applicable motor vehicles to be tested every two years. The inspection is required for the vehicle registration or renewal of the current registration. This is commonly referred to as the Registration Denial Compliance Method.

At the present time, the Department has been surveying state-owned parking lots (i.e., Park and Ride) for vehicles that have had expired registration tags in order to verify compliance with the vehicle emission inspection program. The survey results are made part of the commitment in the Inspection and Maintenance State Implementation Plan ("I/M SIP") to track compliance with 7 DE Admin. Code 1131, which requires a biennial vehicle emission inspection. Applicable vehicles without a proper registered vehicle can be presumed to be in non-compliance with the aforementioned Regulation 1131. Only approximately 270 vehicles surveyed each year are found with expired registrations. This is a small sample size, which does not estimate an accurate compliance rate of the regulation.

The Delaware Criminal Justice Information System ("DELJIS") provides arrest data for vehicles that have expired registration. In 2012, there were 6,944 expired registrations that were non-compliant with the provisions of 7 DE Admin. Code 1131. This current proposal would discontinue the aforementioned parking lot survey data from the Department's report and put in its place the use of expired vehicle registration arrest data provided by the Delaware Criminal Justice Information System. The data from DELJIS will provide a more comprehensive assessment of the compliance with Delaware's existing 7 DE Admin. Code 1131.

The SIP is a complex, fluid document containing regulations, source-specific requirements, and non-regulatory items such as plans and emission inventories. Delaware's initial SIP was approved by the EPA on May 31, 1972. Since that initial approval, the Delaware SIP has been revised numerous times to address air quality non-attainment and maintenance issues. This was done by updating plans and inventories, and by adding new and revised regulatory control requirements. Delaware's SIP is compiled in the code of Federal Regulations at 40 C.F.R. Part 52, Subpart 1.

The Department published its initial proposed revision to the aforementioned Delaware SIP in the September 1, 2013 *Delaware Register of Regulations*, and held a public hearing on September 25, 2013. It should be noted

that no comments were received by the Department in this matter. Proper notice of the hearing was provided as required by law.

The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated December 10, 2013 (Report). The Report recommends certain findings and the adoption of the proposed revision to Delaware's State Implementation Plan, which addresses the aforementioned *Inspection and Maintenance (I/M) concerning Section 11(e) – Program Compliance with 7 DE Admin. Code 1131*, as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed revision to Delaware's aforementioned SIP is well-supported by the record developed by the Department, and I adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed SIP revision.

I find that the Department's experts in the Division of Air Quality fully developed the record to support adoption of the proposed revision to the Delaware State Implementation Plan (SIP) that addresses the aforementioned *Inspection and Maintenance (I/M) concerning Section 11(e) – Program Compliance with 7 DE Admin. Code 1131*. With the adoption of this Order, Delaware will be enabled to discontinue the vehicle parking lot survey system currently utilized by the Department, and replace the data procured from said surveys with the expired vehicle registration arrest data provided by DELJIS, thereby providing a more comprehensive assessment of the compliance with Delaware's existing **7 DE Admin. Code 1131**.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting this proposed SIP revision as final;
- 2.) The Department provided adequate public notice of the proposed SIP revision, and provided the public with an adequate opportunity to comment on the proposed SIP revision, including at the public hearing held on September 25, 2013;
- 3.) The Department held a public hearing on September 25, 2013, in order to consider public comment before making any final decision;
- 4.) The Department's Hearing Officer's Report, including its recommended record and the recommended SIP revision, as set forth in Appendix A, is adopted to provide additional reasons and findings for this Order;
- 5.) The recommended revision to Delaware's State Implementation Plan (SIP) which addresses the *Inspection and Maintenance (I/M) concerning Section 11(e) – Program Compliance with 7 DE Admin. Code 1131* should be adopted as final, thereby enabling Delaware to (1) discontinue the vehicle parking lot survey system currently utilized by the Department, and replace the data procured from said surveys with the expired vehicle registration arrest data provided by DELJIS; (2) provide a more comprehensive assessment of the compliance with Delaware's existing **7 DE Admin. Code 1131**; and (3) because the revision is well supported by documents in the record;
- 6.) The Department shall submit this Order approving the final revision to Delaware's State Implementation Plan (SIP) that addresses the *Inspection and Maintenance (I/M) concerning Section 11(e) – Program Compliance with 7 DE Admin. Code 1131* to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Collin P. O'Mara, Secretary

Low Enhanced Inspection and Maintenance Program Plan for Implementation (PFI)

(06/11/12)

Section 1 - Applicability.

This program will be known as the "Low Enhanced Inspection and Maintenance Program" or the "LEIM Program", and will be identified as such in the balance of this document.

Enhanced programs are required in serious or worse ozone nonattainment areas, depending upon population and nonattainment classification or design value. (The determination of whether an area has a Low Enhanced or a High Enhanced program depends on the emission reductions required for the area. If minimal reductions are needed to meet the Rate of Progress Plan/Attainment requirements, the A Low Enhanced program is acceptable, otherwise a High Enhanced program must be adopted and implemented. Delaware has an approved rate of progress plan for ozone per 40 CFR 350 (b) and the low-enhanced program was accepted by EPA.

The following analysis first portrays the tests of the EPA Rule, first for classification and population criteria and then for extent of area of coverage. For both analyses, various criteria are used to determine applicability. Following each criteria is an analysis which identifies the areas of Delaware where each criteria may or may not apply. The rule language is shown in italics.

(a) Nonattainment area classification and population criteria.

(1) States or areas within an ozone transport region shall implement enhanced I/M programs in any metropolitan statistical area (MSA), or portion of an MSA, within the state or area with a 1990 population of 100,000 or more as defined by the Office of Management and Budget (OMB) regardless of the area's attainment classification. In the case of a multi-state MSA, enhanced I/M shall be implemented in all ozone transport region portions if the sum of these portions has a population of 100,000 or more, irrespective of the population of the portion in the individual ozone transport region state or area.

Applicability: This criteria applies to New Castle and Kent Counties. This criterion excludes Sussex County due to no 1990 MSA.

(2) Apart from those areas described in paragraph (a)(1) of this section, any area classified as serious or worse ozone nonattainment, or as moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1980 Bureau of Census-defined (Census-defined) urbanized area population of 200,000 or more, shall implement enhanced I/M in the 1990 Census-defined urbanized area.

Applicability: This criteria applies to New Castle and Kent Counties. This criteria still excludes Sussex County, with classification of Marginal.

(3) Any area classified, as of November 5, 1992, as marginal ozone nonattainment or moderate CO nonattainment with a design value of 12.7 ppm or less shall continue operating I/M programs that were part of an approved State Implementation Plan (SIP) as of November 15, 1990, and shall update those programs as necessary to meet the basic I/M program requirements of this subpart. Any such area required by the Clean Air Act, as in effect prior to November 15, 1990, as interpreted in EPA guidance, to have an I/M program shall also implement a basic I/M program. Serious, severe and extreme ozone areas and CO areas over 12.7 ppm shall also continue operating existing I/M programs and shall upgrade such programs, as appropriate, pursuant to this subpart.

Applicability: This criteria does not apply to New Castle or Kent Counties since they are required to adopt enhanced I/M.

This criteria does not apply to Sussex since the SIP Revision to include that county in the statewide basic I/M program was not adopted by EPA by November 15, 1990.

(4) Any area classified as moderate ozone nonattainment, and not required to implement enhanced I/M under paragraph (a)(1) of this section, shall implement basic I/M in any 1990 Census-defined urbanized area in the nonattainment area.

Applicability: This criterion does not apply to Delaware counties since there are no counties that are classified as Moderate.

(5) Any area outside an ozone transport region classified as serious or worse ozone nonattainment, or moderate or serious CO nonattainment with a design value greater than 12.7 ppm, and having a 1990 Census-

defined urbanized area population of less than 200,000 shall implement basic I/M in the 1990 Census-defined urbanized area.

Applicability: This criterion does not apply to any Delaware counties since all Delaware counties are included in the ozone transport region.

(6) *If the boundaries of a moderate ozone nonattainment area are changed pursuant to section 107(d)(4)(A)(i)-(ii) of the Clean Air Act, such that the area includes additional urbanized areas, then a basic I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas.*

Applicability: This criteria does not apply to any Delaware counties since no counties are classified as Moderate.

(7) *If the boundaries of a serious or worse ozone nonattainment area or of a moderate or serious CO nonattainment area with a design value greater than 12.7 ppm are changed any time after enactment pursuant to section 107(d)(4)(A) such that the area includes additional urbanized areas, then an enhanced I/M program shall be implemented in the newly included 1990 Census-defined urbanized areas, if the 1980 Census-defined urban area population is 200,000 or more. If such a newly included area has a 1980 Census-defined population of less than 200,000, then a basic I/M program shall be implemented in the 1990 Census-defined urbanized area.*

Applicability: This criteria does not apply to any Delaware counties since no counties (other than Kent) have urbanized areas.

(8) *If a marginal ozone nonattainment area, not required to implement enhanced I/M under paragraph (a)(1) of this section, is reclassified to moderate, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area. If the area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more. If less than 200,000, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.*

Applicability: This criteria could only apply to Sussex, however data does not demonstrate that Sussex should be reclassified to Moderate nonattainment.

(9) *If a moderate ozone or CO nonattainment area is reclassified to serious or worse, an enhanced I/M program shall be implemented in the 1990 Census-defined urbanized area, if the 1980 Census-defined urban area population is 200,000 or more. In the case of ozone areas reclassified as serious or worse, if the 1980 Census-defined population of the urbanized area is less than 200,000, a basic I/M program shall be implemented in the 1990 Census-defined urbanized area(s) in the nonattainment area.*

Applicability: This criterion does not apply to any Delaware counties since no counties are classified as Moderate.

(b) Extent of area coverage.

(1) *In an ozone transport region, the program shall entirely cover all counties within subject MSAs or subject portions of MSAs, as defined by OMB in 1990, except largely rural counties having a population density of less than 200 persons per square mile based on the 1990 Census can be excluded provided that at least 50% of the MSA population is included in the program. This provision does not preclude the voluntary inclusion of portions of an excluded rural county. Non-urbanized islands not connected to the mainland by roads, bridges, or tunnels may be excluded without regard to population.*

Applicability: This criteria does not apply to New Castle or Kent Counties since they are already classified as Severe. This criteria does not apply to Sussex since there are no MSAs in Sussex.

(2) *Outside of ozone transport regions, programs shall nominally cover at least the entire urbanized area, based on the 1990 census. Exclusion of some urban population is allowed as long as an equal number of non-urban residents of the MSA containing the subject urbanized area are included to compensate for the exclusion.*

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Applicability: This criteria does not apply to any Delaware counties since all counties are part of the ozone transport region.

(3) Emission reduction benefits from expanding coverage beyond the minimum required urban area boundaries can be applied toward the reasonable further progress requirements or can be used for offsets, provided the covered vehicles are operated in the nonattainment area, but not toward the enhanced I/M performance standard requirement.

Applicability: Delaware does not plan to include credits from vehicles registered in Sussex and operated in Kent or New Castle due to the tentative nature of this analysis.

(4) In multi-state urbanized areas outside of ozone transport regions, I/M is required in those states in the subject multi-state area that have an urban area population of 50,000 or more, as defined by the Bureau of Census in 1990. In a multi-state urbanized area with a population of 200,000 or more that is required under paragraph (a) of this section to implement enhanced I/M, any state with a portion of the urbanized area having a 1990 Census-defined population of 50,000 or more shall implement an enhanced program. The other coverage requirements in paragraph (b) of this section shall apply in multi-state areas as well.

Applicability: This criteria does not apply to any Delaware counties since all counties are part of the ozone transport region.

The conclusion of this analysis is that New Castle and Kent Counties are subject to the LEIM program requirements.

(c) Requirements after attainment.

A revision to 7 **DE Admin. Code** 1131, will remain in effect if the area is re-designated to attainment status, until approval of a Maintenance Plan, under Section 175A of the Clean Air Act, which demonstrates that the area can maintain the relevant standard for the maintenance period (10 years) without benefit of the emission reductions attributable to the continuation of the LEIM program.

(d) Definitions:

“**Department**” means the Department of Natural Resources and Environmental Control of the State of Delaware.

“**Emissions**” means products of combustion and fuel evaporation discharged into the atmosphere from the tailpipe, fuel system or any emission control component of a motor vehicle.

“**Emissions Inspection Area**” means the emissions inspection area will constitute the entire counties of New Castle and Kent.

“**Emissions Standard(s)**” means the maximum concentration of hydrocarbons (HC), carbon monoxide (CO) or any combination thereof, allowed in the emissions from a motor vehicle as established by the Secretary, as described in this regulation.

“**GPM**” means grams per mile (grams of emissions per mile of travel).

“**Manufacturer’s Gross Vehicle Weight**” means the vehicle gross weight as designated by the manufacturer as the total weight of the vehicle and its maximum allowable load.

“**Model Year**” means the year of manufacture of a vehicle as designated by the manufacturer, or the model year designation assigned by the Division to a vehicle constructed by other than the original manufacturer.

Note: USEPA definition: Model year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year: Provided, that if the manufacturer has no annual production period, the term model year will mean the calendar year.

“**Motor Vehicle**” means every vehicle, as defined in 21 **Del.C.**, Section 101, which is self-propelled, except farm tractors, off-highway vehicles, motorcycles and mopeds.

“Motor Vehicle Technician” means a person who has completed an approved emissions inspection equipment training program and is employed or under contract with the State of Delaware.

“New Model Year Exemption” means an exemption of a designated new model year of an applicable vehicle from any or all of the requirements in this regulation. The exemption will begin on the first day of October of the calendar year, which will be the anniversary date for calculating the applicability of a vehicle for a new model year exemption. For example, a

1997 model year vehicle titled in Delaware in August of 1996 will have an anniversary date of October 1, 1996 and thus does not lose its five model year exemption status until October 1, 2001.

“New Motor Vehicle” means a motor vehicle of the current or preceding model year that has never been previously titled or registered in this or any other jurisdiction and whose ownership document remains as a manufacturer's certificate of origin, unregistered vehicle title.

“Onboard Diagnostics (OBD)” means a system of vehicle component and condition monitors controlled by a central, onboard computer designed to signal the motorist when conditions exist which could lead to a vehicle's exceeding its certification standards by 1.5 times the standard.

“Official inspection station” means all official Motor Vehicle Inspection stations operated by the Division in the State of Delaware.

“Operator” means an employee or contractor of the State of Delaware performing any function related to motor vehicle inspections in the State.

“Performance Standard” means the complete matrix of emission factors derived from the analysis of the model program as defined in 40 CFR Part 51 Subpart S, by using EPA's computerized MOVES emission factor model. This matrix of emission factors is dependent upon various speeds, pollutants and evaluation years.

“Secretary” means the Secretary of the Department of Natural Resources and Environmental Control.

“Stringency Rate” means the tailpipe emission test failure rate expected in an I/M program among pre-1981 model year passenger cars or pre-1984 light-duty trucks.

“Vehicle Type” means the EPA classification of motor vehicles by weight class which includes the terms light duty and heavy duty vehicle.

“Waiver” means an exemption issued to a motor vehicle that cannot comply with the applicable exhaust emissions standard and cannot be repaired for a reasonable cost.

“Waiver Rate” means the number of vehicles receiving waivers expressed as a percentage of vehicles failing the initial exhaust emission test.

(06/11/12)

Section 2 - Low Enhanced I/M performance standard.

(a) On-road testing. The performance standard will include on-road testing (including out-of-cycle repairs in the case of confirmed failures) of at least 0.5% of the subject vehicle population, or 20,000 vehicles whichever is less, as a supplement to the periodic inspection.

(b) Evaluation date:

Enhanced LEIM program areas subject to the provisions of this paragraph will be shown to obtain the same or lower emission levels as the model program described in this paragraph by 2012 for ozone nonattainment areas, and for severe and extreme ozone nonattainment areas, on each applicable milestone and attainment deadline, thereafter. Milestones for NO_x will be the same as for ozone.

(c) On-board diagnostics (OBD):

For Kent and New Castle counties that are required to implement a low enhanced I/M program prior to the effective date of designation and classifications under the 8-hour ozone standard, (April 15, 2004) the performance standard includes inspection of all model year 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in Section 7, and assuming a start date of 2002 for such testing.

(d) Modeling Requirements: The LEIM programs will be designed and implemented to meet or exceed a minimum performance standard, which is expressed as emission levels in area-wide average grams per mile (gpm), achieved from highway mobile sources as a result of the LEIM program. The performance standard was

established using the following LEIM program inputs and local characteristics, such as vehicle mix and local fuel controls found in [Appendix A](#), MOVES Model Inputs and Outputs. Table 1.0- Performance Standards, provides program performance information.

TABLE 1.0 – Performance Standards

Model Input	Low Enhanced Federal I/M Program	Low Enhanced Delaware I/M Program
Network Type:	Centralized	Centralized
Start Date:	1/1/1995	New Castle County 1983 Kent County - 1991
Test Frequency:	Annual	Biennial
Model Year Coverage:	1968 and newer	1968 and newer with 5 year new model exemption
Vehicle Type Coverage:	LDV and LDT rated up to 8500 pounds GVWR	LDV and LDT rated up to 8500 pounds GVWR
Exhaust Emission Test Type:	Idle test	Two speed idle test
Emission Standards:	1981 and newer 1.2% CO 1981 and newer 220 ppm HC	1981 and newer 1.2% CO 1981 and newer 220 ppm HC
Emission Control Device Inspection: (not available in MOVES modeling)	1968-71 PCV valve 1972 and newer EGR valve	1981 and newer Catalytic converter
OBD II	None	1996 and newer with 5 year new model exemption
Evaporative system function check:	None	1975-1995 tank pressure check and gas cap pressure check
Stringency Rate: (incorporated in the compliance rate)	NA	NA
Waiver Rate: (incorporated in the compliance rate)	NA	NA
Compliance Rate:	93.12 %	See appendix A spreadsheets

(06/11/12)

Section 3 - Network type and program evaluation.

(a) The network type for the LEIM program meets the centralized testing requirements. The program in the future, may be decentralized, or a hybrid of the two at the State's discretion, but must demonstrate that it achieves the same (or better) level of emission reduction as the applicable performance standard described in Section 2.

(b) Program evaluation.

The LEIM program includes an ongoing evaluation by the Department to quantify the emission reduction benefits of the program, and to determine if the LEIM program is meeting the requirements of the Clean Air Act and 7 **DE Admin. Code** 1131. The legal authority for this section is contained in 7 **Del.C.** §6707 and 21 **Del.C.** §2143, as included in [Appendix F](#) – Legal Authority for the I/M Program.

(1) LEIM program evaluation reports are prepared by the Department on a biennial basis,

(2) The evaluation program consist, at a minimum, emission inspection test data, as submitted to EPA in the annual report, and evaporative system checks for model years subject to those evaporative system test procedures. The emission inspection test data is obtained from a representative, random sample, taken at the time of initial inspection (before repair) on a minimum of 0.1 percent of the vehicles subject to inspection in a given year. Such vehicles receive a State administered or monitored test as specified in this paragraph (b)(2), prior to the performance of I/M-triggered repairs during the inspection cycle. Under consideration is the remote sensing protocol that will be utilized as the state administered test.

The most recent version of EPA's mobile source emission factor model, eis used to reflect the appropriate emission reduction effectiveness of LEIM program elements within Section 2 of this PFI based on actual performance.

Additional emission data using remote sensing technology is used to evaluate program effectiveness. See [Appendix B](#) for methodology.

(06/11/12)

Section 4 - Adequate tools and resources.

(a) Administrative resources.

The LEIM program maintains the administrative resources necessary to perform all of the LEIM program functions including quality assurance, data analysis and reporting, and the holding of hearings and adjudication of cases when necessary.

(1) The establishment of an I & M Fund by the Delaware Legislature is stated in the following paragraphs of 29 **Del.C.** §6102:

“(a)(1) Notwithstanding other provisions of this chapter, there shall be established a special fund of the State to be known as the "Inspection and Maintenance Fund" (referred to in this subsection as "the I & M Fund").

The Secretary of Finance shall, commencing at the beginning of each fiscal year, cause to be deposited into the I & M Fund amounts received as payments of costs assessed by the Justice of the Peace Courts relating to traffic and criminal cases under § 9801(2) of Title 10, until the amount deposited in said fiscal year shall equal \$2,800,000.

The purpose of the I & M Fund is to provide operating expenses associated with the Delaware Motor Vehicle Enhanced Inspection and Maintenance Program. Any balance in the I & M Fund as of the last day of the fiscal year in excess of \$250,000 shall be deposited into the General Fund.

The Secretary of Finance shall make deposits into the I & M Fund as required under this section commencing after June 30, 1995”

(2) The budget for the Department's auditing functions may be found in [Appendix C](#) – IM Audit Budget. The Divisions operating other administrative functions may be found on the States webpage: <http://www.budget.delaware.gov/fy2011/budget2011.shtml>. These budgets will be updated in the annual I/M report.

(b) Personnel.

The LEIM program employs sufficient personnel to effectively carry out the duties related to the program, including but not limited to these categories: administrative audits, inspector audits, data analysis, LEIM program oversight, LEIM program evaluation, public education and assistance, and enforcement against motorists who are out of compliance with LEIM program regulations and requirements. The number of each category of personnel and their responsibilities are listed in [Appendix D](#) – Personnel Allocation and Responsibilities. When required, enforcement actions taken involving Division and Department personnel are conducted in accordance with the State of Delaware Merit Rules.

(c) Equipment.

The LEIM program possess equipment necessary to achieve the objectives of the program and meet LEIM program requirements, including but not limited to, test equipment and facilities for LEIM program evaluation, and computers capable of data processing, analysis, and reporting. An equipment list is provided in – Vehicle Inspection Program Lane Operator’s Manual for emission inspections in [Appendix E](#) and for auditing in [Appendix R](#) – I/M Audit Equipment.

(06/11/12)

Section 5 - Test frequency and convenience.

(a) The biennial LEIM program test frequency is consistent with Delaware Code requirements of 7 **Del.C.** Chapter 21 §§2109 (Period of Registration Effective Date) and 2110 (Renewal of Registration) and as described in Section 9.0 of 7 **DE Admin. Code** 1131. The test frequency is automatically integrated with the enforcement process since the date of registration renewal is the same date as that of the emission testing requirement. Vehicles are assigned inspection cycles (every two years) in Delaware. The inspection cycle normally remains with the vehicle when sold or transferred within the State. New vehicles, or used vehicles newly tagged in Delaware, enter the "cycle" on the date of registration, and remain on that cycle until removed from service or transferred to another state. [See Section 11(a) for a detailed explanation of the registration denial process and Section 9.0 of 7 **DE Admin. Code** 1131]

(b) In LEIM programs is designed in such a way as to provide convenient service to motorists required to get their vehicles tested. The locations of official inspection facilities are located in Wilmington, New Castle and Dover. These locations have been found to be adequate and publicly accepted convenient locations since 1983. Motorists registered in Kent and New Castle counties may also have their vehicles tested at the Georgetown facility in Sussex County.

The facilities provide sufficient number of testing lanes to insure short waiting times to get a test. In preparing the estimates for the number of lanes required, the State based all assumptions on the peak hours of operation, based on local experience. Additional relief will be realized with the inception of the change of expiration dates to daily, avoiding end of period delays. Short-term wait times will be addressed by opening only enough lanes to provide a convenient wait of no more than a monthly average of 20 minutes.

(06/11/12)

Section 6 - Vehicle coverage.

The legal authority for establishing which vehicles are required to be inspected by this program are contained in 7 **Del.C.** §6707 and 21 **Del.C.** 2143, as included in [Appendix F](#) – Legal Authority for the I/M Program. The inspection requirements for vehicles covered by 7 **DE Admin. Code** 1131, will apply to all of the subject vehicles registered in Kent and New Castle counties.

(06/11/12)

Section 7 -Test procedures and standards.

(a) Test procedure requirements may be found [Appendix G](#) – Test Procedures for the tailpipe emissions, evaporative emissions and on-board diagnostic tests.

(b) Test standards are found in 7 **DE Admin. Code** 1131.

(06/11/12)

Section 8 -Test equipment.

(a) Performance features of computerized test systems.

(1) Test equipment specifications are attached as Appendix E - Vehicle Inspection Program Lane Operator’s Manual. Each test facility is equipped with the following equipment for the idle test,: a tailpipe probe, a flexible sample line, a water removal system, particulate trap, sample pump, flow control components, analyzers for HC, CO and CO₂, and O₂ displays for exhaust concentrations of HC, CO, O₂ and CO₂. Materials that are in contact with the gases sampled will not contaminate or change the character of the gases to be analyzed, including gases from alcohol fueled vehicles. The probe is capable of being inserted to a depth of at least eight inches into

the tailpipe of the vehicle being tested, or into an extension boot if one is used. A pressure gauge and equipment for introducing compressed air into the fuel tank evaporative control system is used for the pressure test. The same equipment is used to separately test the gas tank and cap.

(2) Test equipment for the Idle Test complies with Bureau of Automotive Repair BAR 97 TEST ANALYZER SYSTEM SPECIFICATIONS dated May 1996 and revised August 2008 (see Appendix H – BAR 97 Emission Inspection System Specifications). Public review of this document may requested by contacting the Department at (302) 739 9402.

(3) All test equipment is fully computerized and all processes are automated to the highest degree possible. All computerized equipment have lock-out features to prevent tampering by unauthorized personnel. Station managers or their supervisors have authorization to clear lock-outs or access the hardware for any purpose other than to perform an emissions test: and are required to enter an access code that identifies them personally in order to do so. The date and reason for all lock-outs, as well as the date, and by whom lock-outs are cleared is kept in a data file by the Division.

(4) The test procedure is completely computerized. The procedure begins with data entry, which involves entering the license plate number or the VIN. The Motor Vehicle Technician will obtain the VIN digits from the vehicle itself and checks the tag number as well. The entry either, calls up a pre-existing or, creates a new vehicle file based on the registration data base and previous inspections of the vehicle. The Motor Vehicle Technician compares the data in the file and confirms that the vehicle presented matches the VIN/tag number combination in the file.

(5) The test procedure is completely automatic, including the pass/fail decision. Test lanes are linked on a real-time basis to a central computer; test data are recorded onto the station server and to the central data base as each test is completed, and multiple initial testing is prevented. Records are kept on the central data base for 10 years or the life of the vehicle whichever is less.

(6) The central data base is backed up nightly, and if the vehicle is purged, data is recorded on microfiche permanently. System lockouts are initiated whenever the following quality control checks are failed or not conducted on schedule: periodic calibration or leak checks, and check of the pressure monitoring devices.

(7) All electronic calibration and system integrity checks are performed automatically, i.e., without specific prompting by the Motor Vehicle Technician prior to each test and quality control is under computer control to the extent possible.

(b) Emission test equipment are capable of testing all subject vehicles and are updated from time to time to accommodate new technology vehicles as well as changes to the LEIM program.

(c) At a minimum, emission test equipment:

(1) Are automated to the highest degree commercially available to minimize the potential for intentional fraud and/or human error;

(2) Are secured from tampering and/or abuse;

(3) Are based upon written specifications; and

(4) Are capable of simultaneously sampling dual exhaust vehicles. (5) Are able to determine the RPM of the vehicle.

(d) The vehicle inspection test record is electronically transmitted to the DMV customer service specialist. The vehicle inspection test record will include:

(1) A vehicle description, including license tag number, vehicle identification number, and odometer reading;

(2) The date and time of test;

(3) The name or identification number of the individual(s) performing the tests and the location of the test station and lane;

(4) The type of tests performed, including emission tests, visual checks for the presence of emission control components including catalytic converter, and functional, evaporative system checks including a gas cap test;

(5) The applicable test standards;

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(6) The test results, including exhaust concentrations and pass/fail results for each mode measured, pass/fail results for evaporative system checks, and which emission control devices inspected were passed, failed, or not applicable;

(7) A handout indicating the availability of warranty coverage as required in Section 207 of the Clean Air Act;

(8) Certification that tests were performed in accordance with the regulations; and

(9) For vehicles that fail the tailpipe emission test, some possible causes of the specific pattern of high emission levels found during the test are given in the Vehicle Inspection Program Brochure (See [Appendix I](#)) distributed at the inspection lane.

(e) Functional characteristics of computerized test systems. The test system is composed of emission measurement devices and other motor vehicle test equipment controlled by a computer.

(1) The test system automatically:

(i) Makes a pass/fail decision for all measurements;

(ii) Records test data to an electronic medium;

(iii) Conducts regular self-testing of recording accuracy;

(iv) Performs electrical calibration and system integrity checks before each test, as applicable, forwarded electronically to the inspection database where it is retained for 10 years or the life of the vehicle whichever is less, and;

(v) Initiate system lockouts for:

(A) Tampering with security aspects of the test system;

(B) Failing to conduct or pass periodic calibration or leak checks;

(C) Failing to conduct or pass the pressure monitoring device check (if applicable);

(D) A full data recording medium or one that does not pass a cyclical redundancy check.

(2) The test systems will include a real-time data link to a host computer that prevents unauthorized multiple initial tests on the same vehicle in a test cycle and to insure test record accuracy.

(3) The test system will insure accurate data collection by limiting, cross-checking, and/or confirming manual data entry.

(4) On-board diagnostic test equipment requirements

(i) The test system interface to the vehicle includes a plug that conforms to SAE J1962 Diagnostic Connector. The procedure is done in accordance with SAE J1962 Diagnostic Connector (JUN92).

(ii) The test system is capable of communicating with the standard data link connector of vehicles with certified OBD systems.

(iii) The test system is capable of checking for the monitors supported by the on-board diagnostic system and the evaluation status of supported monitors (test complete/test not complete) in Mode \$01 PID \$01, as well as able to request the diagnostic trouble codes, as specified in SAE J1979. In addition, the system has the capability to include bi-directional communication for control of the evaporative canister vent solenoid.

(06/11/12)

Section 9 - Quality control.

Quality control measures will insure that emission measurement equipment is calibrated and maintained properly, and that inspection, calibration records, and control charts are accurately created, recorded and maintained.

(a) General provisions.

(1) The Division has contracted with Environmental Systems Products Inc. (ESP Inc.) to perform regular maintenance on the emission testing equipment. The contract provisions detailing the maintenance procedures are given in [Appendix E](#) - Vehicle Inspection Program Lane Operator's Manual.

(2) Preventive maintenance on all inspection equipment necessary to insure accurate and repeatable operation will be performed on a periodic basis.

(3) Computerized analyzers automatically record quality control check information, lockouts, attempted tampering, and any other recordable circumstances (e.g., service calls) which are monitored in the preventative maintenance routine to insure quality control

(b) Requirements for steady-state emissions testing equipment and evaporative system functional test equipment.

(1) Equipment is maintained according to demonstrated good engineering practices to assure test accuracy. The calibration and adjustment requirements in [Appendix E - Vehicle Inspection Program Lane Operator's Manual](#) apply to the steady-state test equipment.

(2) The Division analyzers use ambient air as zero air, which draws the air from outside the inspection bay or lane in which the analyzer is situated.

(3) The analyzer housing is constructed to protect the analyzer bench and electrical components from ambient temperature and humidity fluctuations that exceed the range of the analyzer's design specifications.

(4) Analyzers automatically purges the analytical system after each test

(c) Document security.

Measures are taken to ensure that compliance documents and data files cannot be stolen, removed, changed or edited without being damaged or marked for detection. Additional procedures concerning document security can be found in [Appendix J – Procedures for Document Security](#).

(06/11/12)

Section 10 -Waivers and compliance via diagnostic inspection.

The LEIM program allows for the issuance of a waiver, which is a form of compliance with the LEIM program requirements that allows a motorist to comply without meeting the applicable test standards, as long as prescribed criteria are met.

(a) Issuance criteria.

[Requirements may be found in **7 DE Admin. Code 1131 Section 7.1.**]

(b) Compliance via diagnostic inspection.

[Requirements may be found in **7 DE Admin. Code 1131 Section 7.2.**]

(c) Quality control of waiver issuance.

(1) The Director will provide control of waiver issuance and processing by establishing a system of waivers issued by the Division. The Division's waiver issuance protocol is contained in [Appendix K – Emissions Waiver Procedure](#).

(2) Vehicle owners or lessors are informed via a standardized form provided by the Division, of potential warranty coverage, and ways to obtain warranty repairs upon their failure of an emissions inspection.

(3) Division personnel will insure that repair receipts are authentic and cannot be revised or reused. All qualified receipts will be permanently marked so they cannot be revised or reused. Department personnel or personnel contracted by the Department, on a periodic schedule will perform visual inspections of all related repairs done by anyone, except for waiver repairs done by Certified Emission Repair Technicians.

(4) Waivers will be tracked, managed, and accounted for by the Division with respect to time extensions or exemptions in the Division's database so that owners or lessors cannot receive or retain a waiver improperly. Records will be maintained in secured, limited access data files and cross checked on a quarterly basis with the main data base to ensure waivers are being properly managed and reinspected biennially by the inspection program. The Department performs periodic reviews of all waiver documentation but not limited to waiver applications and repair receipts.

(xx/xx/2013)

Section 11 - Motorist compliance enforcement.

Compliance is ensured through the denial of motor vehicle registration unless the vehicle has complied with the I/M requirement prior to initial registration or registration renewal.

(a) Registration denial.

(1) Registration denial enforcement (See Appendix L – Registration Denial, the Systems Requirement Definition for the Registration Denial process) is defined as rejecting an application for initial registration a vehicle or re-registration of a used vehicle (i.e., a vehicle being registered after the initial retail sale and associated registration) unless the vehicle has complied with the LEIM program requirement prior to granting the application. This enforcement is the express responsibility of the Division with the assistance of police agencies for on road inspection and verification. The law governing the registration of motor vehicles is found in the Delaware Criminal and Traffic Law Manual, Title 21 **Del.C.** Ch. 21. Pursuant to section 207(g)(3) of the Act, nothing in this section will be construed to require that new vehicles will receive emission testing prior to initial retail sale. In designing its enforcement program, the Director will:

(2) Provide an external, readily visible means of determining vehicle compliance with the registration requirement to facilitate enforcement of the LEIM program. This is in the form of a tag sticker which clearly indicate the vehicles compliance status and the expiration date.

(3) Adopt a schedule of biennial testing that clearly determines when a vehicle will have to be inspected to comply prior to (re)registration;

(4) Design a registration denial system which features the electronic transfer of information from the inspection lanes to the Division's Data Base, and monitors the following information:

(i) Expiration date of the registration;

(ii) Unambiguous vehicle identification information; and

(iii) Whether the vehicle received either a waiver or a certificate of compliance;

(iv) The Division will finally check the inspection database to ensure all program requirements have been met before issuing a vehicle registration.

(5) Ensure that evidence of testing is available and checked for validity at the time of a new registration of a used vehicle or registration renewal

(6) Prevent owners or lessors from avoiding testing through manipulation of the title or registration system; title transfers do not restart the clock on the inspection cycle.

(7) Limit and track the use of time extensions of the registration requirement to only one 30 day extension per vehicle to prevent repeated extensions.

(b) Registration Policy: The following is a description of the Division of Motor Vehicles' registration policy according to Delaware law on the registration of newly titled vehicles and registration renewals:

(1) New motor vehicles that have never been titled/registered in any state are allowed to register for a period of five years without complying with the I/M requirement found in 7 **DE Admin Code** 1131.

(2) All other vehicles older than 5 model years (and that must comply with 7 **DE Admin Code** 1131) coming into Delaware or being titled/registered for the first time are required to pass I/M inspection prior to titling and registration. 21 **Del.C.** §2102, requires new residents to register all vehicles within 60 days after taking up residency in Delaware (See [Appendix M](#) – Chapter 21. Registration of Vehicles).

(3) All vehicles applying for registration renewal must pass an I/M inspection within 90 days of their registration expiration date in order for their registration to be renewed.

(4) Delaware's registration denial system is designed to prevent fraud and registrations without inspection. The system was fully computerized at the end of

1998 which allows the Division to use Vehicle Inspection Reports (VIR's) which are generated when a vehicle is inspected as backup documentation. The computer system will now automate the entire system. The test record is stored in the vehicle's registration database. A failure in any portion of the test will prevent the vehicle from being registered. The system will lock out the clerks from updating the vehicle record until the vehicle passes inspection. The VIR will only be used as backup documentation in the event a failure occurs in the automated system.

(5) The I/M test record for each vehicle is stored in the Division's mainframe computer database. The I/M test record is matched to the vehicle's Vehicle Identification Number (VIN), and the last ten (10) I/M inspections will be stored with the vehicle's registration record. The test record is a computer-based record with a paper back-up (VIR). The paper record is only kept for one year. The motorist is given the VIR when the inspection is completed.

(6) The Division currently issues a registration card and license plate sticker to show a vehicle is registered. Currently, vehicle registrations expire on the 15th and the last day of each month.

(7) Penalty for non-compliance:

(i) Delaware law prohibits a vehicle owner from operating or knowingly permitting the operation of a vehicle upon the highway that is not registered or which does not have attached thereon the number plate assigned by the Department or a current expiration sticker. Violators will be subject to fines referred to in Motor Vehicle Law Title 21, Section 2102. Delaware law enforcement officers having probable cause to believe that a vehicle is not in compliance with the law or regulations may inspect the vehicle and documents and make arrests for non-compliance.

(ii) At any time and notwithstanding the possession of current registration plates as provided by Delaware Title 21, the Transportation Secretary, any authorized agent of the Department or any police officer may, upon reasonable cause, require the owner or operator of a vehicle to stop and submit such vehicle and the equipment to such further inspection and test with reference thereto as may be appropriate. In the event such vehicle is found to be in an unsafe condition or lacking the required equipment or is not in proper repair and adjustment, the officer will give a written notice to the driver and will send a copy thereof to the Department. The notice will require that such vehicle and its equipment be placed in safe condition and in proper repair and adjustment and/or that proper equipment be obtained, and that a certificate of inspection and approval for such vehicle be obtained within five (5) days thereafter.

(iii) Every owner or driver upon receiving the notice prescribed in subsection (a) of Title 21, Section 2144, of the Delaware Code will comply therewith and will, within the five (5) day period, secure an endorsement upon such notice by an inspector of the Department that such vehicle is in safe condition and properly equipped and its equipment in proper repair and adjustment and will then forward the notice to the Department. No person will operate any such vehicle after receiving a notice with reference thereto as above provided, except as may be necessary to return such vehicle to the residence or the place of business of the owner or driver if within a distance of 20 miles or to a garage until the vehicle and its equipment has been placed in proper repair and adjustment and otherwise made to conform to the requirements of this title.

(8) Rental car agencies are required to obtain vehicle registrations in Delaware for the number of vehicles the agency has available for rent in Delaware.

(9) In Delaware, the compliance sticker (and vehicle tag) normally remains with any vehicle already in the program, regardless of ownership. Vehicles changing the compliance sticker and vehicle tag with a change in vehicle ownership will be assigned a new inspection cycle and require a new compliance sticker prior to re-registration. Manipulation of the title or registration will therefore be ineffective in attempting to avoid inspection.

(c) The following explains how the registration denial system currently works and how the computer controlled system will work once implemented:

(1) A registration renewal notice (email) may be sent to each vehicle owner approximately 90 days prior to the expiration of the current registration/inspection. Email notification must be requested by the vehicle owner. No other notification will be given.

(2) The vehicle is required to be inspected at one of the Division of Motor Vehicles inspection facilities. The vehicle inspection test record (VIR) is electronically transmitted to the DMV customer service specialist. When the vehicle passes inspection, the owner proceeds to obtain the registration or renewal for the vehicle.

(3) Vehicles failing inspection must have the vehicle repaired and presented back for inspection. The Division allows one retest without proof of repair. After the first retest, documented repairs must be performed prior to another retest.

Vehicle owners whose registration have expired or are about to expire can apply for a temporary license plate to allow for operation of the vehicle for 30 days while the vehicle is being repaired. The temporary tags and permits are tightly controlled and are shown on the vehicle's registration record. This prevents an owner from obtaining more than one temporary tag or permit. The vehicle cannot obtain registration until a VIR is recorded which shows the vehicle has passed I/M and the Division's safety inspection program.

(4) The vehicle registration system that began in 1998 provides the registration specialist with on-line access to the vehicle inspection record. When an owner registers a vehicle, the computer system will indicate if the vehicle failed or passed inspection. When a vehicle fails inspection, the computer system will lock the vehicle record and prevent any attempt to register the vehicle. The registration specialist can look at the vehicle

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inspection test record and inform the customer of the failed items. The customer can then be offered a 30-day temporary tag or temporary permit. Vehicles passing inspection will be allowed to register and will be provided a new registration card and plate sticker. Vehicles being titled for the first time in Delaware are subject to the same restrictions. The system will prevent the vehicle from being registered.

(5) The vehicle registration system will have two methods to override the inspection failure. The first method of registration denial override occurs with emission waivers issued under 7 **DE Admin Code** 1131. The waiver information and receipts are verified by Delaware's Department of Natural Resources and Environmental Control (DNREC) on routine basis. The second method is by supervisory override. The override authority allows the registration specialists to change a vehicle record from fail to pass for certain safety-related failure items. Registration specialists will not have the authority or the ability to change any I/M-related items.

(6) The vehicle registration system security requires DMV supervisory personnel to have the sole authority to override a record in the event of a computer failure.

(7) Example: vehicle owner takes vehicle through inspection, passes and receives a VIR showing a pass in all areas. Through a computer malfunction, the vehicle record is not updated in the mainframe computer system. The supervisor can verify through the inspection lane station manager computer that the vehicle was inspected and passed. The supervisor would then override the system and allow the renewal. The supervisor would notify the Division's Computer Support of the computer problem and action would be taken to ensure the inspection test record is sent to the mainframe system.

(8) The override transaction ability will be strictly controlled. Managers will be provided with reports when the override is used. The override transaction report will contain information to easily identify the individual who performed the transaction override, date, time and the item overridden.

(d) The legal authority to enforce the program is contained in applicable sections in 7 **Del.C.** 6010 and 7 **Del.C.** 6702. The procedures to be followed by the Division in the specific operation of the enforcement program, as well as a penalty schedule to be followed when violations occur, are included in Appendix M – Chapter 21. Registration of Vehicles.

(e) Program Compliance

(1) ~~The Department assesses the program compliance rate through the examination of data from the Delaware Justice Information System, test records and enforcement actions. In addition, the Department conducts on road and parking lot surveys of vehicles with Delaware tags, noting the vehicle inspection sticker located on the tag and indicating the month and year of expiration. In these same surveys, tag numbers are tracked and verified with the Division's record as to registration compliance. The number of out of compliance vehicles that are identified in the on road test and the number of vehicles that have expired registration stickers that are identified by the parking lot checks will be compiled and a compliance rate will be determined. The Department will compile after each calendar year a list of vehicles that were issued summons for expired registrations during traffic stops by Delaware law enforcement personnel.~~

(2) The State commits to a sustained level of LEIM program enforcement which will ensure a compliance rate of no less than 96% of subject vehicles. This reflects the compliance rate used in LEIM program modeling. In the event that LEIM program evaluation reveals that this compliance rate is not being continuously met, the following contingency measures will be implemented by the Department:

- (i) ~~additional on-road testing and additional parking lot surveillance~~
- (ii) contact fleet and federal fleet managers to ensure full compliance

(3) Should these measures not be sufficient to bring the State's compliance rate to the needed level, a final measure will be implemented. The Division will generate a list of all vehicles known to be operating in the State under legal tags. This list will be compared to a list of all vehicles in compliance with the LEIM program. Any outstanding vehicles will be investigated by the Department and brought into compliance subject to current laws and regulations.

(f) Certain vehicles will be exempt from the inspection requirements of the LEIM program.

A detailed estimation of the percentage of the light duty fleet by vehicle type, and, the percentage of the subject fleet that vehicle type represents is provided in the annual report. The exempt status of these vehicles will be confirmed through the registration inspection requirements and through other established enforcement mechanisms. If a violation is found, the exempt status of any individual vehicle may be revoked.

(g) Owners of subject vehicles must have a valid electronic vehicle inspection record test or a waiver from the Director's representative in order to receive registration from the Division.

(h) State and local enforcement branches, such as police agencies, as part of this program, will cite motorist who do not visibly display evidence of compliance with the registration and inspection requirements.

(1) Fleet and all other registered applicable vehicle compliance will be assured through the regular enforcement mechanisms concurrent with registration renewal, on-road testing and parking lot observation. Fleets will be inspected at official inspection stations.

(2) Federal fleet compliance will be assured through the cooperation of the federal fleet managers as well as also being subject to regular enforcement operations of the Division.

(06/11/12)

Section 12 - Motorist compliance enforcement program oversight.

The enforcement program will be audited regularly and will follow effective program management practices, including adjustments to improve operation when necessary.

(a) Quality assurance and quality control.

A quality assurance program has been implemented to insure effective overall performance of the enforcement system. Quality control procedures are required to instruct individuals in the enforcement process regarding how to properly conduct their activities. Audits of the Quality Assurance and Quality Control procedures will be performed by Department Auditors and reported to EPA on an annual basis. The quality control and quality assurance program will include:

(1) Verification of exempt vehicle status by inspecting and confirming such vehicles during registration;

(2) Facilitation of accurate critical test data and vehicle identifier collection through the use of automatic data capture systems such as bar-code scanners or optical character readers, or through redundant data entry performed upon appearance for testing by lane personnel;

(3) Maintenance of an audit trail to allow for the assessment of enforcement effectiveness such that all documentation can be controlled, tracked and reported to EPA by the Department on an annual basis with program evaluations;

(4) Establishment of written procedures for personnel directly engaged in LEIM program enforcement activities, contained in [Appendix N](#) – Quality Assurance Enforcement Procedures;

(5) Establishment of written procedures for Division personnel engaged in LEIM program document handling and processing, such as registration clerks or personnel involved in sticker dispensing and waiver processing, as well as written procedures for the auditing of their performance, contained in [Appendix O](#) – Document Handling Procedures – Division Personnel;

(6) A determination of enforcement program effectiveness through annual audits of test records and LEIM program compliance documentation, with the procedures described in [Appendix P](#) – Test Record Audits – Department and Division Personnel. Results will be provided to EPA with annual program evaluation reports;

(7) Enforcement procedures in accordance with the Agreement Between State of Delaware Department of Public Safety Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules for immediate disciplining, retraining, or removing enforcement personnel who deviate from established requirements;

(b) Information management.

The information data base to be used in characterizing, evaluating, and enforcing the LEIM program will:

(1) Determine the subject vehicle population through analysis of vehicles receiving State of Delaware tags in New Castle and Kent Counties;

(2) Permit EPA audits of the enforcement process;

(3) Assure the accuracy of registration and other program document files and data bases through internal and cross data base comparisons of records;

(4) Maintain and ensure the accuracy of the testing database through periodic internal and/or third-party Departmental review; through automated or redundant data entry; and, through automated analysis for valid alpha-

numeric sequences of the vehicle identification number (VIN), certificate number, or tag number. Department auditors will annually review and verify analyses, and assist the Division and Police agencies in enforcement actions;

(5) Compare on a quarterly and annual basis, the testing database to the registration database to determine LEIM program effectiveness and establish compliance rates.

(6) Sample the fleet as a determination of compliance through parking lot surveys, road-side pull-overs, or other in-use vehicle measurements.

(06/11/12)

Section 13 - Quality assurance.

An ongoing quality assurance LEIM program has been implemented to discover, correct and prevent fraud, waste, and abuse and to determine whether procedures are being followed, are adequate, whether equipment is measuring accurately, and whether other problems might exist which would impede LEIM program performance. The quality assurance and quality control procedures will be evaluated at least annually to assess their effectiveness and relevance in achieving LEIM program goals. The written procedures for all audits are found in [Appendix Q – I/M Audit Procedures](#).

(a) Performance audits.

Performance audits will be conducted by the Departments auditors on a minimum of an annual basis to determine whether Motor Vehicle Technicians are correctly performing all tests and other required functions. Performance audits will be of two types: overt and covert, and will include:

(1) Performance audits based upon written procedures and results will be reported using either electronic or written forms to be retained by the Department, with sufficient detail using violations of procedures found, to support a hearing if necessary. This will include all evidence uncovered of a violation, including the time, date, nature of the violation, and possible effect on vehicles being inspected and the programs overall effectiveness. A copy of the written performance audits will be provided to the Division Director. Preliminary results will be discussed with the lane manager. Final results will be transmitted to both the Division Director and the Department Secretary who will decide if further action is required, and initiate that further action;

(2) Performance audits in addition to regularly programmed audits for Motor Vehicle Technicians suspected of violating regulations as a result of audits, data analysis, or consumer complaints;

(3) Overt performance audits will be performed once per month and will include:

(i) A check to see that required record keeping practices are being followed;

(ii) A check for licenses or certificates and other required display information; and

(iii) Observation and written evaluation of each Motor Vehicle Technician's ability to properly perform an inspection;

(4) Covert performance audits will include:

(i) Remote visual observation of Motor Vehicle Technician performance, which will include the use of aids such as binoculars or video cameras, at least once per year per Motor Vehicle Technician.

(ii) Full documentation of all audit preparation, execution and performance, which will be sufficient for building a legal case and establishing a performance record;

(b) Record audits.

Station and Motor Vehicle Technician records will be reviewed or screened at least monthly by the Department, to assess station performance and identify problems that may indicate potential fraud or incompetence. Such review will include:

(1) Software-based, computerized analysis which can be initiated by Division or Department personnel to examine station records and identify statistical inconsistencies, unusual patterns, and other discrepancies;

(2) Visits to inspection stations by Department auditors, to review records not already covered in the electronic analysis (if any); and

(3) Comprehensive accounting for all official forms (when implemented) used to demonstrate compliance with the LEIM program.

(c) Equipment audits.

During overt site visits, auditors will conduct quality control evaluations of the required test equipment, including (where applicable):

- (1) A gas audit using gases of known concentrations at least as accurate as those required for regular equipment quality control and comparing these concentrations to actual readings;
 - (2) A check for tampering, worn instrumentation, blocked filters, and other conditions that would impede accurate sampling;
 - (3) A leak check;
 - (4) A check to determine that station gas bottles used for calibration purposes are properly labeled and within the required tolerances;
 - (5) A check of the system's ability to accurately detect background pollutant concentrations;
 - (6) A check of the pressure monitoring devices used to perform the evaporative canister pressure test; and
- (d) Auditor training and proficiency.
- (1) Auditors are required to be formally trained and knowledgeable in:
 - (i) The use of analyzers;
 - (ii) LEIM program rules and regulations;
 - (iii) The basics of air pollution control;
 - (iv) Basic principles of motor vehicle engine repair, related to emission performance;
 - (v) Emission control systems; (vi) Evidence gathering;
 - (vii) State administrative procedures laws; (viii) Quality assurance practices; and
 - (ix) Covert audit procedures.
 - (2) Auditors will themselves be audited by their supervisor, at least once per annum.

(06/11/12)

Section 14 - Enforcement against motor vehicle technicians.

Enforcement against motor vehicle technicians includes swift, sure, effective, and consistent penalties for violation of LEIM program requirements in accordance with the Agreement between the State of Delaware Department of Transportation Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules.

(a) Imposition of penalties.

The State of Delaware will continue to operate the LEIM program using State of Delaware Employees for all functions. Should enforcement actions be required for violations of program requirements, the State of Delaware Merit Rules, shall be adhered to in all matters.

(b) Legal authority.

The Director has the authority to temporarily suspend station Motor Vehicle Technicians' certificates immediately upon finding a violation or upon finding the Motor Vehicle Technician administered emission tests with equipment which had a known failure and that directly affects emission reduction benefits. The Director has the authority to impose disciplinary action against the station manager or the Motor Vehicle Technician, even if the manager had no direct knowledge of the violation but was found to be careless in oversight of motor vehicle technicians or has a history of violations, in accordance with the State of Delaware Merit Rules. The lane manager is held fully responsible for performance of the motor vehicle technician in the course of duty.

(c) Recordkeeping.

The Department maintains records of all warnings, suspensions, revocations, and violations and are compiled statistics on violations and penalties on an annual basis. These records are provided to the Division Director and to the EPA on an annual basis.

(06/11/12)

Section 15 - Data collection.

Accurate data collection is essential to the management, evaluation, and enforcement of an LEIM program. The Director will gather test data on individual vehicles, as well as quality control data on test equipment.

(a) Test data.

The goal of gathering test data is to unambiguously link specific test results to a specific vehicle, LEIM program registrant, test site, and Motor Vehicle Technician, and to determine whether or not the correct testing parameters were observed for the specific vehicle in question. In turn, these data can be used to distinguish complying and non-complying vehicles as a result of analyzing the data collected and comparing it to the registration database, to screen inspection stations and Motor Vehicle Technicians for investigation as to possible irregularities, and to help establish the overall effectiveness of the LEIM program. At a minimum, the LEIM program collects the following with respect to each test conducted:

- (1) Test record number;
- (2) Inspection station and Motor Vehicle Technician numbers;
- (3) Test system number;
- (4) Date of the test;
- (5) Vehicle Identification Number;
- (6) Delaware tag number;
- (7) Manufacturer's Gross Vehicle Weight Rating (GVWR) for vehicles above 8,500 pounds;
- (8) Vehicle model year, make, and body style and EPA vehicle classification;
- (9) Odometer reading;
- (10) Category of test performed (i.e., initial test, first retest, or subsequent retest);
- (11) Fuel type of the vehicle (i.e., gas, diesel, or other fuel);
- (12) Emission test sequence(s) used;
- (13) Hydrocarbon emission scores and standards for each applicable test mode;
- (14) Carbon monoxide emission scores and standards for each applicable test mode;
- (15) Carbon dioxide emission scores (CO+CO₂) and standards for each applicable test mode;
- (16) Nitrogen oxides emission scores, if available, and standards for each applicable test mode;
- (17) Results (Pass/Fail/Not Applicable) of the applicable visual inspections for the gas cap, catalytic converter, evaporative system, and any other visual inspection for which emission reduction credit is claimed;
- (18) Results of the evaporative system pressure test expressed as a pass or fail; and

(b) Quality control data. At a minimum, the program gathers and reports the results of the quality control checks required under Section 9 of this PFI, identifying each check by station number, system number, date, and start time. The data report also contains the concentration values of the calibration gases used to perform the gas characterization portion of the quality control checks.

(06/11/12)

Section 16 -Data analysis and reporting.

Data analysis and reporting are required to allow for monitoring and evaluation of the program by program management and EPA, and provides information regarding the types of program activities performed and their final outcomes, including summary statistics and effectiveness evaluations of the enforcement mechanism, the quality assurance system, the quality control program, and the testing element. Initial submission of the following annual reports commenced on July 1, 1996. The biennial report commenced on July 1, 1999.

(a) Test data report.

The Secretary submits to EPA by July of each year a report providing basic statistics on the testing program for January through December of the previous year, including:

- (1) The number of vehicles tested by model year and vehicle type;
- (2) By model year and vehicle type, the number and percentage of vehicles:
 - (i) Failing the emissions test initially;

- (ii) Failing each emission control component check initially;
- (iii) Failing the evaporative system integrity check initially;
- (iv) Failing the first retest for tailpipe emissions;
- (v) Passing the first retest for tailpipe emissions;
- (vi) Initially failed vehicles passing the second or subsequent retest for tailpipe emissions;
- (vii) Initially failed vehicles passing each emission control component check on the first or subsequent retest by component;
- (viii) Initially failed vehicles passing the evaporative system integrity check on the first or subsequent retest;
- (ix) Initially failed vehicles receiving a waiver; and
- (x) Vehicles with no known final outcome (regardless of reason);

- (3) The initial test volume by model year and test station;
- (4) The initial test failure rate by model year and test station; and
- (5) The average increase or decrease in tailpipe emission levels for HC, CO, and NOx (if applicable) after repairs by model year and vehicle type for vehicles receiving an emission test.

(b) Quality assurance report.

The Secretary will submit to EPA by July of each year a report providing basic statistics on the quality assurance program for January through December of the previous year, including:

- (1) The number of inspection stations and lanes operating throughout the year; and
 - (2) The number of inspection stations and lanes operating throughout the year:
 - (i) Receiving overt performance audits in the year;
 - (ii) Not receiving overt performance audits in the year;
 - (iii) Receiving covert performance audits in the year;
 - (iv) Not receiving covert performance audits in the year.
 - (3) The number of Motor Vehicle Technicians and stations, in accordance with the Agreement between State of Delaware Department of Transportation Motor Vehicle Division and Council 81 of the American Federation of State, County and Municipal Employees and the State of Delaware Merit Rules:
 - (i) That were suspended, fired, or otherwise prohibited from testing as a result of overt or covert audits;
 - (ii) That were suspended, fired, or otherwise prohibited from testing for other causes; and
 - (4) The number of Motor Vehicle Technicians certified to conduct testing;
 - (5) The number of hearings:
 - (i) Held to consider adverse actions against Motor Vehicle Technicians and stations; and
 - (ii) Resulting in adverse actions against Motor Vehicle Technicians and stations;
 - (6) The total number of covert vehicles available for undercover audits over the year;
- and
- (7) The number of covert auditors available for undercover audits.

(c) Quality control report.

The Secretary submits to EPA by July of each year a report providing basic statistics on the quality control program for January through December of the previous year, including:

- (1) The number of emission testing sites and lanes in use in the LEIM program;
 - (2) The number of equipment audits by station and lane;
 - (3) The number and percentage of stations that have failed equipment audits; and
 - (4) Number and percentage of stations and lanes shut down as a result of equipment audits.
- (d) Enforcement report.
- (1) The Secretary will, at a minimum, submit to EPA by July of each year a report providing basic statistics on the enforcement program for January through December of the previous year, including:

(i) An estimate of the number of vehicles subject to the inspection program, including the results of an analysis of the registration data base;

(ii) The percentage of motorist compliance based upon a comparison of the number of valid final tests with the number of subject vehicles;

(iii) The number of compliance surveys conducted, number of vehicles surveyed in each, and the compliance rates found.

(2) The Secretary will provide the following additional information obtained from the Director:

(i) A report of the LEIM program's efforts and actions to prevent motorists from falsely registering vehicles out of the LEIM program area or falsely changing fuel type on the vehicle registration, and the results of special studies to investigate the frequency of such activity; and

(ii) The number of registration file audits, number of registrations reviewed, and compliance rates found in such audits.

(e) Additional reporting requirements.

In addition to the annual reports in paragraphs (a) through (d) of this section, LEIM programs will submit to EPA by July of every other year, beginning with July 1, 1998, biennial reports addressing:

(1) Any changes made in LEIM program design, personnel levels, procedures, regulations, and legal authority, with detailed discussion and evaluation of the impact on the LEIM program of all such changes; and

(2) Any weaknesses or problems identified in the LEIM program within the two-year reporting period, what steps have already been taken to correct those problems, the results of those steps, and any future efforts planned.

(06/11/12)

Section 17 -Motor Vehicle Technician training and certification.

The Department and the Division will jointly ensure that adequate and appropriate training is available within the state. Interested agents may apply to be a state training facility. Upon evaluation of the program and a positive finding, the agent may be certified. The Department and the Division will monitor and evaluate the training program delivery at least annually to ensure that it continues to meet the requirements of the program and reflects changes occurring in the program over time. (See also [Appendix S](#) – Training and Certification of Delaware DMV Inspection Lane Personnel)

(a) Training.

(1) Motor vehicle technician training will impart knowledge of the following:

(i) The air pollution problem, its causes and effects;

(ii) The purpose, function, and goal of the inspection LEIM program;

(iii) State inspection regulations and procedures;

(iv) Technical details of the test procedures and the rationale for their design;

(v) Emission control device function, configuration, and inspection;

(vi) Test equipment operation, calibration, and maintenance;

(vii) Quality control procedures and their purpose;

(viii) Public relations; and

(ix) Safety and health issues related to the inspection process.

(2) In order to complete the training requirement, a trainee will pass with a minimum of 80% of correct responses to all questions, a written test administered by the Division. In addition, a hands-on test will be administered in which the trainee demonstrates without assistance the ability to conduct a proper inspection, to properly utilize equipment and to follow other procedures. Inability to properly conduct all test procedures will constitute failure of the test. The LEIM program will take appropriate steps to insure the security and integrity of the testing process, and that sufficient training is provided to allow all motor vehicle technicians to complete the training requirements.

(b) Motor Vehicle Technician Certification.

(1) All motor vehicle technicians will be certified by the Division in order to perform official inspections.

(2) Completion of motor vehicle technician training and passing required tests with a grade of at least 80% will be a condition of certification.

(3) Motor vehicle technician certificates will be valid for no more than 2 years, at which point refresher training and testing will be required prior to renewal. Alternative approaches based on more comprehensive skill examination and determination of motor vehicle technician competency may be used.

(4) Certificates will not be considered a legal right but rather a privilege bestowed by the LEIM program conditional upon adherence to LEIM program requirements.

(06/11/12)

Section 18 -Public information and consumer protection.

(a) Public awareness.

The Department and the Division will ensure the development of a plan for informing the public on an ongoing basis throughout the life of the LEIM program of the air quality problem, the requirements of federal and state law, the role of motor vehicles in the air quality problem, the need for and benefits of an LEIM program, how to maintain a vehicle in a low-emission condition, how to find a qualified repair technician, and the requirements of the LEIM program. This information will be provided to motorists whose vehicles fail the emission test in a brochure developed by the Division entitled "Vehicle Inspection Program Brochure. Motorists are also be offered a list of repair facilities in the area and information on the results of repairs performed by repair facilities in the area, as described in Section 19 (b)(1) of this PFI. Additional information regarding the LEIM program is made available at www.dnrec.delaware.gov.

(b) Consumer protection.

The Department will institute procedures and mechanisms to protect the public from fraud and abuse by Motor Vehicle Technicians, and others involved in the LEIM program. It will include mechanisms for protecting whistle blowers and following up on complaints by the public or others involved in the process. It will include a program to assist owners in obtaining warranty covered repairs for eligible vehicles that fail a test. An additional consumer protection policy by the Division is included in [Appendix J](#).

(06/11/12)

Section 19 -Improving repair effectiveness.

Effective repairs are the key to achieving LEIM program goals and the state has taken steps to ensure the capability exists in the repair industry to repair vehicles that fail I/M tests.

(a) Technical assistance.

The Department will provide the repair industry with information and assistance related to vehicle inspection diagnosis and repair.

(1) The Department will regularly inform repair facilities of changes in the inspection LEIM program, training course schedules, common problems being found with particular engine families, diagnostic tips and the like.

(2) The Department will provide a telephone number where the public may call with questions related to the legal requirements of state and Federal law with regard to emission control device tampering, engine switching, or similar issues. Where possible, the Department will assist repair technicians with repair problems and answer technical questions that arise out of the repair process.

(b) Performance monitoring.

(1) The Department will monitor the performance of individual motor vehicle repair facilities, and provide to the public at the time of initial failure, a summary of the performance of Certified Emission Repair Technicians that have repaired vehicles for retest. The initial stage of the repair technician report card will score certified emission repair technicians only with a 1 each time a repaired vehicle comes in for a retest and passes and a 0 when the repaired vehicle fails after the retest. Motor Vehicle Technicians will enter the Certified Emission Repair Technician's code number into data management system and the vehicle emission report for that retest will then have the technician and the results of the test in the record. The records will then be compiled in a report an a percent of repaired vehicles that passed the retest will be given to each technician. The initial analysis will be to assess the training that the state provides to the technician to acquire certification. After the initial stage of the

performance monitoring program is completed, a full performance monitoring will include statistics on the number of vehicles submitted for a retest after repair by the repair facility, the percentage passing on first retest, the percentage requiring more than one repair/retest trip before passing, and the percentage receiving a waiver. The Department will issue procedures to weight the averages for repair shops, to avoid causing a shop to carry a poor record from the beginning of the program that does not reflect their current ability to make repairs. The LEIM program may provide motorists with alternative statistics that convey similar information on the relative ability of repair facilities provide effective and convenient repairs, in light of the age and other characteristics of vehicles presented for repair at each facility.

This performance monitoring will be achieved by requiring waiver applicants to have repairs performed at repair facilities with state certified technicians beginning on January 1, 1997 for vehicles registered in New Castle County and July 1, 1997 for vehicles registered in Kent County. Department personnel will review the Vehicle Inspection Report and Vehicle Emission Repair Report Form for the failures that occurred and the types of repairs done before retest.

(2) The Department will provide feedback, including statistical and qualitative information (repair technician report card) prior to releasing the information to the public, to individual repair facilities on a regular basis (at least annually) regarding their success in repairing failed vehicles. Copies will be sent to the Division.

(c) Repair technician training.

The Department will assess the availability of adequate repair technician training in the emissions inspection area and, if the types of training described in paragraphs (c)(1) through (4) of this section are not currently available, will insure that training is made available to all interested individuals in the community either through private or public facilities. This will involve working with other training agencies or training companies approved by the Department and Division) to add curricula to existing programs or start new programs. The training available will include:

(1) Diagnosis and repair of malfunctions in computer controlled, closed-loop vehicles;

(2) The application of emission control theory and diagnostic data to the diagnosis and repair of failures on the emission test and the evaporative system functional check;

(3) Utilization of diagnostic information on systematic or repeated failures observed in the emission test and the evaporative system functional check; and

(4) General training on the various subsystems related to engine emission control.

(d) Other training agencies or training companies approved by the Department and Division) will provide, jointly certified by the Department and the Division, adequate training in emission repair to qualified individuals. The program of study will be consistent with the EPA Rule, and will qualify the trainees to perform effective repairs on vehicles failing the emission test. The course of study will be available on ongoing basis. The Department will cooperate with other training agencies or training companies approved by the Department) on an ongoing basis to ensure the training program remains current with any changes to the program or its requirements.

(06/11/12)

Section 20 -On-road testing.

On-road testing is defined as the measurement of HC, CO, and/or CO₂ emissions on any road or roadside in any I/M area. On-road testing is required in the emission inspection area as defined in **7 DE Admin Code 1131**.

(a) General requirements.

(1) On-road testing will be part of the emission testing system, but is to be a complement to testing otherwise required. The use of remote sensing is one alternative under consideration to fulfill this requirement.

(2) On-road testing will evaluate the emission performance of 0.5% of the subject fleet or 20,000 vehicles, whichever is less, including any vehicles that may be subject to the follow-up inspection provisions of paragraph (a)(4) of this section, each inspection cycle. For Delaware, that means that at least 1,125 valid inspections on vehicles are to be conducted in this manner, adjusting annually for any changes in subject fleet size.

(3) Owners of vehicles that have previously been through the normal periodic inspection and passed the final retest and found to be high emitters during the on- road test will be notified that the vehicles are required to

pass an out-of-cycle follow-up inspection. Notification of the requirement to appear for testing will be issued by mail.

(4) Number of vehicles failing the on-road emission test or found not in compliance with applicable sections of 7 **DE Admin. Code** 1131 will be compiled and used as a measurement of the compliance rate of the LEIM program.

(5) The on-road tests will be done at different locations in the LEIM area and cover different times of the year

(06/11/12)

Section 21 -Implementation deadlines.

Implementation Deadlines.

All requirements related to the LEIM program will be effective ten days after the Secretary's order has been signed and published in the State *Register* except for the following provisions that have been amended to this regulation:

	Date of Implementation
Two-speed idle test (vehicle at idle and 2500 rpm) of all covered vehicles model years 1981 and newer.	November 1, 1999
On-Board Diagnostics Test	January 1, 2002

DELAWARE MANUFACTURED HOME RELOCATION AUTHORITY
PUBLIC NOTICE

On August 15, 2013, the Delaware Manufactured Home Relocation Authority (the "Authority") adopted Emergency Regulations to be used in the administration of the Rent Justification Dispute Procedures set forth in 25 Del.C. Section 7043, which were published in the Delaware *Register of Regulations* on September 1, 2013. 17 Del. Reg. 267 (09/01/13). These Emergency Regulations were effective September 10, 2013 and scheduled to expire 120 days thereafter. At its Board meeting on December 12, 2013, the Authority adopted a resolution to extend the effective date of the Emergency Regulations for an additional 60 day period, as authorized by law. After receiving and reviewing any public comments on the Emergency Regulations, the Authority intends to adopt final regulations to be used in the administration of the Rent Justification Dispute Procedures and will publish the final proposed regulations in the Delaware *Register* for public comment.

DEPARTMENT OF AGRICULTURE
HARNES RACING COMMISSION
PUBLIC NOTICE
501 Harness Racing Rules and Regulations

The Delaware Harness Racing Commission, pursuant to 3 Del.C. §10005, proposes to change its Rules in Section 3, Section 5, Rule 7.6.13.1.16 and 7.6.13.1.17 and Section 8 including Rule 8.3.5.2, 8.5.5.17, 8.6.2.3 and 8.6.2.5. The Commission will hold a public hearing on the proposed rule changes at Dover Downs on February 11, 2014 at 10:15 am. Written comments should be sent to Mark Davis, Racing Administrator of the Delaware Harness Racing Commission, Department of Agriculture, 2320 South DuPont Highway, Dover, DE 19901. Written comments will be accepted for thirty (30) days from the date of publication in the *Register of Regulations* on January 1, 2014.

The proposed changes are for the purpose of updating the Rules to reflect current policies, practices and procedures. Copies are published online at the *Register of Regulations* website: http://regulations.delaware.gov/services/current_issue.html A copy is also available for inspection at the Harness Racing Commission office.

DEPARTMENT OF EDUCATION
PUBLIC NOTICE

The State Board of Education will hold its monthly meeting on Thursday, January 16, 2014 at 1:00 p.m. in the Townsend Building, Dover, Delaware.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE
PUBLIC NOTICE**1915(i) Home and Community-Based Services State Plan Option Amendment**

In accordance with the requirements of 42 U.S.C. §1396a (a)(13) and 42 CFR §447.205, Delaware Health and Social Services (DHSS), Division of Medicaid and Medical Assistance (DMMA) provides notice to the public that it intends to submit a 1915(i) Home and Community-Based Services (HCBS) State Plan amendment to the Centers for Medicare and Medicaid Services (CMS) to offer HCBS as an optional state plan benefit.

The public is invited to review and comment on the State's proposed 1915(i) State Plan concept paper and amendment request. Written comments may be sent to: Sharon L. Summers, Planning & Policy Development Unit, Division of Medicaid and Medical Assistance, 1901 North DuPont Highway, P.O. Box 906, New Castle, Delaware 19720-0906 or via fax to 302-255-4425. For consideration, written comments must be received by 4:30 p.m. on

January 31, 2014. Please identify in the subject line: Proposed 1915(i) Home and Community-Based Services State Plan Amendment.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

DIVISION OF PUBLIC HEALTH
PUBLIC NOTICE

4463 Licensing and Registration of Operators of Public Water Supply Systems

Health Systems Protection, Office of Drinking Water, Division of Public Health, has proposed amendments to the State of Delaware Regulations Governing the Licensing and Registration of Operators of Public Water Supply Systems. Amendments include the establishment of two new license categories, a limited license for small systems and a distribution system operator license. We are also proposing to raise the passing grade for examinations from 70% to 75%, require all operators to obtain 20 hours of continuing education each year, require half of all continuing education credits be directly related to operation, treatment or distribution of potable water as well as makes technical corrections to previously adopted federal regulations. In addition, the disciplinary procedures section has been revised to better comply with the administrative procedures act. Due to the extensive number of amendments the Division has concluded that the current regulations should be repealed and replaced in their entirety with the proposed regulations being published.

On January 1, 2014, the Division plans to publish proposed amendments to the Delaware Regulations Governing the Licensing and Registration of Operators of Public Water Supply Systems and hold them out for public comment per Delaware law.

Copies of the proposed regulations are available for review in the January 1, 2014 edition of the Delaware *Register of Regulations*, accessible online at: <http://regulations.delaware.gov> or by calling the Office of Drinking Water at (302) 741- 8630.

Any person who wishes to make written suggestions, testimony, briefs or other written materials concerning the proposed regulations must submit same to Deborah Harvey by 4:30 p.m. on Monday, February 3, 2014 at:

Deborah Harvey, Division of Public Health
417 Federal Street
Dover, DE 19901
Email: Deborah.Harvey@state.de.us, Phone: (302) 744-4700

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

OFFICE OF THE SECRETARY

PUBLIC NOTICE

103 Chronic Violator Regulation

The Regulation has been rendered moot by the passage of legislation (Senate Bill 92) in 2012 that amended state law and eliminated the Department's role as proposing and determining whether a party is a chronic violator. Under the amended law, DNREC proposes the designation to the Environmental Appeals Board. The most recent changes in the law spell out the process and alleviate the need for the regulations. This action is based on a recommendation by the Department of Justice to repeal the regulation in its entirety. Therefore, the Chronic Violator Regulation is proposed to be deleted from the Administrative Code.

The Department of Natural Resource and Environmental Control Office of Community Services will hold a public hearing to accept comments on the proposed repeal of the Chronic Violator Regulation on February 3, 2014 at 6:00 p.m. in the auditorium of the Richards and Robbins Building located at 89 Kings Highway, Dover, DE 19901. Written comments on the proposed repeal will be accepted until February 18, 2014 and may be submitted to Jenny

Bothell, DNREC Office of Community Services, 89 Kings Highway, Dover, DE 19901, or by sending an email to Jennifer.Bothell@state.de.us.

DIVISION OF WASTE AND HAZARDOUS SUBSTANCES**PUBLIC NOTICE****1302 Regulations Governing Hazardous Waste**

To improve flexibility and service to the regulated community, the Solid and Hazardous Waste Management Section (SHWMS) proposes to add compliance self-certification provisions to DRGHW. This amendment will enable the SHWMS to offer customized compliance assistance and verification to identified business sectors, providing these selected hazardous waste generators regulatory guidance that is specific to their business needs.

The public hearing on the proposed amendment to DRGHW will be held on Monday, January 27, 2014 from 6:00 p.m. to 6:30 p.m. in the Richardson and Robbins Auditorium, 89 Kings Highway, Dover, DE.

DIVISION OF WATER RESOURCES**REGISTER NOTICE****7401 Surface Water Quality Standards**

The amended Surface Water Quality Standards presented here are the result of a review of the Standards that started with Start Action Notice #2013-32 in 2013. Department staff reviewed factors affecting human health criteria, Environmental Protection Agency (EPA) documents, staff recommendations, and documents related to site-specific criteria for the tidal Murderkill River. A markup of proposed amendments to the Surface Water Quality Standards was prepared for the Register. To ensure compliance with the Clean Water Act and EPA regulations, the State of Delaware, in accordance with 7 Del.C. §6010, will amend the State of Delaware Surface Water Quality Standards.

A public hearing on these regulations is scheduled for 5:00 PM on January 22, 2014 in the DNREC Auditorium located in the Richardson & Robbins Building at 89 Kings Highway, Dover, DE, with comments accepted until February 6, 2014.

Additional information, copies of the regulation and supporting documents are available on the internet at this URL: <http://www.dnrec.state.de.us/DNREC2000/Divisions/Water/WaterQuality/Standards.htm>. To request a copy of the proposed revisions to the regulations please contact David Wolanski, Watershed Assessment and Management Section at (302) 739-9939 or by email at david.wolanski@state.de.us.

The procedures for adopting regulations are established in 7 Del.C. §6006 and 29 Del.C. Chapter 101. Inquiries regarding comments should be directed to Robert Haynes at (302) 739-9039. Written comments should be addressed to: David Wolanski, Watershed Assessment and Management Section, Silver Lake Plaza-Suite 220, 820 Silver Lake Blvd, Dover, DE 19904-2464. Electronic versions of comments are preferred; please e-mail comments to David Wolanski at david.wolanski@state.de.us

DIVISION OF WATERSHED STEWARDSHIP**REGISTER NOTICE****7408 TMDLs for the Murderkill River Watershed**

The Department of Natural Resources and Environmental Control (DNREC) plans to conduct a Public Hearing regarding proposed amendments to the Total Maximum Daily Loads (TMDLs) Regulation for nutrients and oxygen consuming materials for the Murderkill River Watershed, which was promulgated in June of 2005. A TMDL sets a limit on the amount of a pollutant that can be discharged into a waterbody and still meet water quality standards. TMDLs are composed of Waste Load Allocations (WLAs) for point source discharges, Load Allocations (LAs) for nonpoint sources, and a Margin of Safety (MOS) to account for uncertainties.

Since promulgation of the 2005 Murderkill River TMDLs, a multi-year monitoring, research, and modeling study of Murderkill River Watershed by DNREC and other cooperating agencies and institutions resulted in proposing scientifically-based, site-specific dissolved oxygen and nutrient criteria for the tidal Murderkill River. This proposed amendment of the WLA component of the 2005 TMDLs is to comply with these new site-specific dissolved oxygen and nutrient criteria for the tidal Murderkill River.

This proposed action will amend the Waste Load Allocation component of the 2005 Murderkill River TMDLs Regulation. DNREC will work with Kent County Government to implement the requirements of the amended Waste Load Allocation.

The Public Hearing on proposed amendments to the 2005 Murderkill River Watershed TMDLs Regulation will be held at 5:00 p.m., Wednesday, January 22, 2014, in the DNREC Auditorium, 89 Kings Highway, Dover, Delaware.

Please send written comments to Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140, email: (Hassan.Mirsajadi@state.de.us). All written comments must be received by February 4, 2014. Electronic submission is preferred.

Copies of the Proposed amendments to the 2005 Murderkill River Watershed TMDL Regulation and technical support documents will be available as of Wednesday, January 1, 2014 on the Department's website at <http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx> or by contacting Hassan Mirsajadi, Watershed Assessment and Management Section, Division of Watershed Stewardship, Department of Natural Resources and Environmental Control, 820 Silver Lake Boulevard, Suite 220, Dover, DE 19904-2464, (302) 739-9939, facsimile: (302) 739-6140. Electronic comments are preferred; please e-mail comments to Hassan.Mirsajadi@state.de.us.

DEPARTMENT OF SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES

DIVISION OF FAMILY SERVICES OFFICE OF CHILD CARE LICENSING

105 Residential Child Care Facilities and Day Treatment Programs

The Office of Child Care Licensing proposes to amend the Delaware Requirements for Residential Child Care Facilities and Day Treatment Programs in response to public comments received after the publication of revised regulations in the June, 2013 and August, 2013 *Register of Regulations*.

A copy of the proposed regulations is being published in the January, 2014 edition of the Delaware *Register of Regulations*. Interested parties wishing to offer comments on the proposed regulations or submit written suggestions, data, briefs or other materials concerning the proposed regulations must submit same to Elizabeth Timm, Office of Child Care Licensing, 1825 Faulkland Road, Wilmington, Delaware 19805 or by fax to 302-633-5112 by the close of business on January 31, 2014.

DEPARTMENT OF STATE DIVISION OF PROFESSIONAL REGULATION

100 Board of Accountancy PUBLIC NOTICE

The Delaware Board of Accountancy, pursuant to 24 **Del.C.** §105(a)(1), proposes to revise its rules and regulations. The Board will hold a public hearing on the proposed rule change on February 19, 2014 at 9:30 AM, Second Floor Conference Room B, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to LaTonya Brown, Administrator for the Delaware Board of Accountancy, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until March 6, 2014.

DIVISION OF PROFESSIONAL REGULATION

1900 Board of Nursing PUBLIC NOTICE

The Delaware Board of Nursing, pursuant to 24 **Del.C.** §1904(c), proposes to revise regulation 2.4.1.7.4 and

7.2.3. The proposed change at rule 2.4.1.7.4 clarifies that LPN practice does not equate to RN practice for purposes of nursing educational programs, and the proposed change at 7.2.3 clarifies that the practice of nursing occurs at the location of the patient regardless of the location of the nurse.

The Board will hold a public hearing on the proposed regulation change on February 12 at 1:00 p.m., Second Floor Conference Room A, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments should be sent to Dr. Pamela Zickafoose, Executive Director of the Delaware Board of Nursing, Cannon Building, 861 Silver Lake Blvd., Dover, DE 19904. Written comments will be accepted until February 27, 2014 pursuant to 29 **Del.C.** §10118(a).

DIVISION OF PROFESSIONAL REGULATION
2500 Board of Pharmacy
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2506(a)(1), the Delaware Board of Pharmacy has proposed revisions to its rules and regulations. The rules pertaining to patient counseling are amended to provide that the pharmacist, or registered intern or pharmacy student, shall provide counseling to a new patient, an existing patient with a new prescription, or a patient with a prescription that has been modified. Rule 12.0, addressing health care facilities, has been revised to ensure appropriate oversight by a pharmacist where the pharmacist is providing contractual pharmaceutical services in a health care facility setting. Finally, Rule 17.0, listing the crimes substantially related to the practice of pharmacy, has been expanded to encompass certain sexual offenses and crimes against children.

A public hearing will be held on February 19, 2014 at 10:00 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments on the amendments to the rules and regulations. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Board of Pharmacy, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Board at the above address.

In accordance with 29 **Del.C.** §10118(a), the final date to receive written comments will be March 6, 2014 which is 15 days following the public hearing. The Board will deliberate on all of the public comment at its regularly scheduled meeting on March 19, 2014 at 10:00 a.m., at which time it will determine whether to adopt the rules and regulations as proposed or make additional changes due to the public comment.

DIVISION OF PROFESSIONAL REGULATION
2900 Real Estate Commission
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to its rules and regulations.

A public hearing will be held on February 13, 2014 at 9:30 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be February 28, 2014, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on March 13, 2014 at 9:30 a.m., at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed an amendment to Rule 13.0 to add a new Rule 13.2.1.4 to clarify the CE hours required where an individual has been licensed for at least eighteen months but less than twenty-four months.

DIVISION OF PROFESSIONAL REGULATION
2925 Real Estate Commission Education Committee
PUBLIC NOTICE

Pursuant to 24 **Del.C.** §2906(a)(1), the Delaware Real Estate Commission has proposed revisions to the Real Estate Commission Education Guidelines (the "Guidelines").

A public hearing will be held on February 13, 2014 at 9:15 a.m. in the second floor conference room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware, where members of the public can offer comments. Anyone wishing to receive a copy of the proposed rules and regulations may obtain a copy from the Delaware Real Estate Commission, 861 Silver Lake Boulevard, Dover, Delaware 19904. Persons wishing to submit written comments may forward these to the Commission at the above address. Pursuant to 29 **Del.C.** §10118(a), the final date to receive written comments will be February 28, 2014, which is 15 days following the public hearing. The Commission will deliberate on all of the public comments at its regularly scheduled meeting on March 13, 2014 at 9:15 a.m., at which time the Commission will decide whether to adopt the revisions as proposed.

The Commission has proposed revisions to Rule 7.0 to specify that, where a student requests approval for a continuing education course, an instructor resume is not required for a Commission or ARELLO approved instructor. Rule 7.0 is further amended to state that Modules 1 – 6 automatically qualify for Module 7 credit. Rule 8.4 is revised to state that the course provider shall determine whether electronic devices may be used during the course.

OFFICE OF MANAGEMENT AND BUDGET
DIVISION OF FACILITIES MANAGEMENT
Drug Testing Regulation
PUBLIC NOTICE

Regulations for the Drug Testing of Contractor and Subcontractor Employees Working on Large Public Works Projects (hereafter the “Drug Testing Regulation”). Members of the public may receive a copy of the proposed regulation at no charge by United States Mail by writing Mr. Robert Scoglietti at the following address:

122 Martin Luther King Jr. Blvd South
Dover, DE 19901.

The proposed regulation is intended to safeguard the public by establishing the mechanism, standards and requirements of a Mandatory Drug Testing Program for Contractors and Subcontractors that will be incorporated by reference into all Large Public Works Contracts awarded pursuant to 29 **Del.C.** §6962.

The key components of the Drug Testing Regulation include the following:

- Applicability for all public works projects bid under 29 **Delaware Code** 6962.
- A requirement that all Large Public Works RFP's require each Contractor and Subcontractor to have a program of drug testing.
- Conformance to federal (SAMHSA) standards for collection, chain of custody procedures, laboratory testing, and Medical Officer review.
- Requirements for Initial Testing, Random Testing, Reasonable Suspicion Testing, Return to Duty Testing, and Accident Triggered Testing.
- Consequences of a positive test result by an Employee of a Contractor or Subcontractor.
- Penalties for non-compliance with this regulation.

Any person who wishes to make written suggestions, provide compilations of data, testimony, briefs or other written materials concerning to the proposed Drug Testing Regulation must submit them to:

Robert Scoglietti
Delaware Office of Management and Budget
122 Martin Luther King Jr. Blvd. South
Dover, DE 19901

no later than the close of business on March 7, 2014.

The Director of the Office of Management and Budget, or an employee of the Office of Management and Budget designated by the Director, will hold a public hearing at which members of the public may present comments on the proposed regulation on February 11, 2014 in Room 219 of the Haslet Armory, 122 Martin Luther King Jr. Blvd South, Dover DE at 2:00 PM. It is requested that those interested in presenting statements at the public hearing register in advance by contacting:

Robert Scoglietti, Delaware Office of Management and Budget
122 Martin Luther King Jr. Blvd. South, Dover, DE 19901